



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Fifteenth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.11310 of 2016
IN
SA No.1848 of 2003

SMT.LAKSHIMAYEE AMMAL,

... PETITIONER/APPELLANT

Vs

1 THIRU.DURAI PILLAI (DIED)

2) TMT.KANNAMMAL, (DIED)

3 MR.DHANAPAL,

4 MR.KAMARAJ,

5 MR.SHANMUGHAVEL,

6 SMT. NALINI,

(RR3 TO 6 ARE BROUGHT TO

RECORD AS LRS OF THE DECEASED

R2, WHO ARE ALREADY ON RECORD

MEMO RECORDED USR.NO.5103 DATED

09.11.2106, VIDE COURT DATED 13.11.2017

MADE IN CMP(MD)NO.11310/2016

BY SBJ

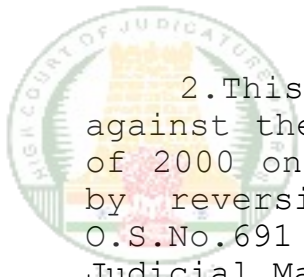
... RESPONDENTS/PROPOSED
RESPONDENTS 2 TO 6

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the delay of 1297 days in filing the restoration application and pass such further or other orders it may deem fit and proper in the circumstances of case and thus render justice.

PRAYER IN SA.NO.1848/2003 :

Second Appeal filed under Section 100 of C.P.C the against the decree and judgment in A.S.No.51/2000 dated 18.3.2003 on the file of the Subordinate Court at Pudukottai District in setting aside the decree and Judgement in O.S.No.691/1995 dated 24.11.1996 on the file of the District Munsif Cum Judicial Magistrate Court at Keeranur.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. A.RAJESH KANNA, Advocate for the petitioner and of MR.K.P.NARAYANAKUMAR, Advocate for the Respondents 3 to 6 the court made the following order:-



2.This Second appeal has been filed by the petitioner/appellant against the judgement and decree dated 18.01.2009 made in A.S.No.51 of 2000 on the file of the learned Sub-ordinate Judge, Pudukkottai by reversing judgement and decree dated 24.11.1999 passed in O.S.No.691 of 1995 on the file of the learned District Munsif-cum-Judicial Magistrate, Keeranur.

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3.The petitioner states that the second appeal came up for admission on 23.10.2003 and the same was admitted and interim stay was granted. Subsequently, the interim stay made absolute on 22.01.2004 and after bifurcation of the Hon'ble High Court, S.A.No.1848 of 2003 was transferred from the Principal Seat at Madras to this Madurai Bench.

4.The petitioner states that the respondent Durai Pillai was passed away and the appellant has not taken any steps to bring on record the legal heirs of the deceased respondent. On 25.03.2013 neither the petitioner nor his counsel appeared before this Court, since the counsel for the petitioner was practising at Chennai. Therefore, the appeal was dismissed for de-fault. After obtaining notice in E.P.No.12 of 2014 only, he realized that the appeal was dismissed on 25.03.2013 for non-prosecution for not taking steps to bring on record the legal heirs of deceased respondent Durai Pandi. He further states that only due to the fact that the counsel who was practising in Chennai failed to inform about the hearing of the appeal and none appeared before this Court, the delay has occurred. Hence, the petitioner seeks to condone the delay of 1297 days for taking steps to restore the Second Appeal.

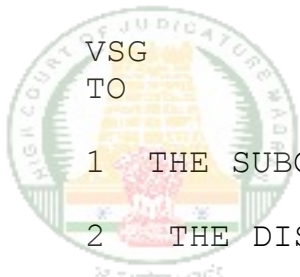
5.Respondent no.6 has filed a counter stating that the explanation of delay for restoring the second appeal is improper and the appellant is misusing the proceedings of the Court for extraneous reasons. Hence, they opposed the same.

6.However, considering the reasons stated by the petitioner that the delay has occurred only by the counsel appearing for the petitioner who was practising in Chennai, this Court is of the view that an opportunity should be given to the petitioner to put forth his case in Second Appeal and dispose of the same on merits. Hence, this Court is inclined to allow this petition on condition that the petitioner shall pay a sum of Rs.1500/- (Rupees One Thousand and Five Hundred Only) to the learned counsel for the respondent nos. 3 to 6 in total, on or before 22.11.2017, failing which, this petition will stand automatically dismissed, without further reference to this court.

sd/-

15/11/2017

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VSG
TO

1 THE SUBORDINATE JUDGE, PUDUKOTTAI

2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, KEERANUR

GJM/CM/VR/SAR-I-21.11.2017-3P-3C

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ORDER

IN

CMP (MD) No.11310 of 2016

IN

SA No.1848 of 2003

Date :15/11/2017