



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

Wednesday, the Twentieth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN

REV.APLC(MD) No.173 of 2017
in
MP(MD)No.1/2011
in
A.S.No.1406/1988

1.SARASWATHI AMMAL (DIED)
BY HER LEGAL REPRESENTATIVE
2.U.JAYAMANI

... PETITIONER

Vs

1 RAMACHANDRAN

RAMASAMI (DIED),
LAKSHMANAN (DIED).

2 RAMAKRISHNAN

(RR1,3&4 ARE BROUGHT ON RECORD AS LRS OF DECEASED R2 VIDE MEMO
IN USR 2254/13 VIDE COURT ORDER DATED 20.08.13 BY RKJ)

3 VENKATACHALAM,

4 RAJALAKSHMI

5 JAYARAMAN

6 NAGENDRAN

7 KUMAR

8 KASTURI, W/O.LATE.LAKSHMANAN,

(R-10 BROUGHT ON RECORD AS THE SOLE LR OF THE DECEASED R-3,
VIDE COURT ORDER DATED 3.1.17 MADE IN MP(MD)No.1 to 3/14
in MP.1/11 BY SSSRJ)

... RESPONDENTS

Prayer in Rev.A(MD)No.173/2017:-

Review Application is filed under Order XLVII Rule 1 read with
Section 114 of Code of Civil Procedure , 1908 praying this Hon'ble
Court to review the order passed in MP(MD)No.1 of 2011 in A.S.1406
of 1988 dated 20/06/2017.

Prayer in MP(MD)No.1/2011 in A.S.No.1406/1988:-

Miscellaneous Petition is filed under Section 5 of the Civil
Procedure Code praying this Hon'ble Court to Condone the delay of
2734 days caused in filing the petition the restore the above
appeal A.S.1406/1988 which was dismissed for non prosecution on
22/01/2004 to the file of this Honourable Court and he heard on
merits.



Prayer in A.S.No.1406/1988:

Appeal is filed under Section 96 of the code against the decree and Judgment dated 30.09.1988 passed by the Principal Subordinate Judge, Madurai made in O.S.No.269/1986.

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ORDER : This Petition coming on for hearing on this day, upon perusing the petition and the affidavit and material papers of this petition and upon hearing the arguments of M/S.S.Ramesh, Advocate for the Petitioner and of Mr.M.S.Balasubramania Iyer, Advocate for the 1st Respondent, and of Mr.T.C.S.Thillai Nayagam, Advocate for the 8th Respondent, this Court made the following order:-

This Review application has been filed by the appellant in A.S.No.1406 of 1988, as against the order passed in MP(MD)No.1 of 2011, dated 20.06.2017.

2. MP(MD)No.1 of 2011 has been filed under Section 5 of CPC, to condone the delay of 2734 days in filing the petition to restore AS (MD)No.1406 of 1988, which was dismissed for non Prosecution on 22.01.2004.

3. AS (MD)No.1406 of 1988 had been filed, against the judgment and decree, dated 30.09.1988, passed by the learned Principal Sub Judge, Madurai in OS.No.269 of 1986. The said appeal was dismissed on 22.01.2004. MP(MD)No.1 of 2001 had been filed to condone the delay of 2734 days in filing the petition to restore the said appeal.

4. This Court had considered MP(MD)No.1 of 2011 and after hearing the learned counsel for the Petitioners therein and the Respondents therein, by order dated 20.06.2017, had dismissed the said MP(MD)No.1 of 2011. This Review application has been filed as against the said order.

5. The main ground taken in the Review application is that there were an earlier affidavit and petition filed to restore AS (MD) No.1406 of 1988, but, which petition and affidavit had been misplaced, while the records were transmitted from the Principal Bench at Madras to the Madurai Bench, but however, that had not been taken into account. It has been further stated that there would have been no delay in filing the application to restore AS (MD)No.1406 of 1988. It has been stated that there was a mention about the said affidavit, which was sworn by the junior counsel and if that application had been considered, MP(MD)No.1 of 2011 would have been viewed differently by this Court.

6. Mr.S.Ramesh, the learned counsel for the Review Applicant and Mr.Balasubramania Iyer, the learned counsel for the Respondents were heard.

7. The learned counsel for the Review Applicant has stated that the earlier application had been actually filed, but was misplaced during the transit of records from the Principal Bench to the Madurai Bench and therefore, a new application had been filed and in the said process, there was a delay. But, the said delay would not have occurred, had the earlier application been considered by this Court.



8. On the other hand, the learned counsel for the Respondents has stated that the Applicant cannot now state about the earlier application, since they had voluntarily abandoned the same and filed a new application. They did not seek for re-construction of the earlier application.

9. I have carefully considered the arguments advanced by the learned counsel on either side.

10. The only aspect to be considered is whether this Court had considered the earlier affidavit. In paragraph 3 of the order, the earlier affidavit had been extracted and this Court had also given a finding on the same. Even though the petition as such was not available in the court bundle, still, this court had given a finding with respect to the said affidavit and petition. By filing the present application, the learned counsel for the Petitioner had abandoned the earlier application. Quite apart from that, this Court had also examined the issues on all angles and had stated that the delay had not been properly explained. I find no reason to entertain the present Review application and accordingly, it is dismissed. No costs.

Sd/-

Assistant Registrar(AE)

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE PRINCIPAL SUBORDINATE JUDGE,
MADURAI.

+1. C.C. to M/S.Balasubramania Iyer, Advocate SR.No.94075

ORDER DATE :20/12/2017

ORDER

REV.APLC(MD) No.173 of 2017

RL/3C/3P/SV/MMS/SAR1/17/1/2018