



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

Tuesday, the Twenty Second day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mrs Justice PUSHPA SATHYANARAYANA

CMP(MD) Nos.3009 & 3010 of 2016
IN

SA(MD) Nos.SR2111 & 2117 of 2015

SELVAM EDUCATIONAL AND CHARITABLE TRUST,
REPRESENTED BY ITS MANAGING TRUSTEE,
S.A.JOY RAJA

... PETITIONER/APPELLANT
IN BOTH PETITIONS

Vs

1 KANYAKUMARI DISTRICT LORRY OWNERS ASSOCIATION,
REPRESENTED BY ITS PRESIDENT,
P.RAJA RETHINAM

2 P.PAULKANI NADAR

... RESPONDENTS/RESPONDENTS
IN CMP(MD) No.3009 of 2016

1 KANYAKUMARI DISTRICT LORRY OWNERS ASSOCIATION,
REPRESENTED BY ITS PRESIDENT,
P.RAJA RETHINAM

2 P.RAJA RETHINAM

3 P.PAULKANI NADAR

... RESPONDENTS/RESPONDENTS
IN CMP(MD) No.3010 of 2016

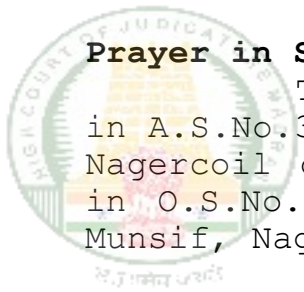
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the delay of 1420 days in filing the above Second Appeal against the Judgment and Decree dated 30.11.2010 made in A.S.No.36 of 2009 on the file of the Principal Sub Court, Nagercoil and thus render justice.

Prayer in CMP(MD) . 3010/ 2016 :

To Condone the delay of 1420 days in filing the above Second Appeal against the Judgment and Decree dated 30.11.2010 made in A.S.No.37 of 2009 on the file of the Principal Sub Court, Nagercoil and thus render justice.

Prayer in SA(MD) . SR2111/ 2015 :

To set aside the Judgment and decree dated 30.11.2010 made in A.S.No.37 of 2009 on the file of the Principal Subordinate Judge, Nagercoil confirming the Judgment and Decree dated 21.04.2008 made in O.S.No.622 of 1999 on the file of the II Additional District Munsif, Nagercoil.



Prayer in SA(MD). SR2117/ 2015 :

To set aside the Judgment and decree dated 30.11.2010 made in A.S.No.36 of 2009 on the file of the Principal Subordinate Judge, Nagercoil confirming the Judgment and Decree dated 21.04.2008 made in O.S.No.680 of 1999 on the file of the II Additional District Munsif, Nagercoil.

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.S.ANWAR SAMEEM, Advocate for the petitioner in both petitions and of MR.H.THAYAMANASWAMY, Advocate for the respondent in both petitions the court made the following order:-

The third party/petitioner has filed the appeals with a delay of 1420 days in filing S.A.(MD)SR.Nos.2111 & 2117 of 2015.

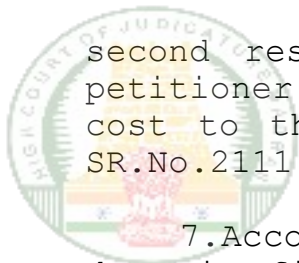
2.In the affidavit filed in support of the petition, it is averred that the petitioner is a subsequent purchaser of the subject matter of the property in this appeal. The petitioner being a third party, has kept quiet, under the impression that his vendor would take care of his interest. But the conduct of the vendor is not satisfactory and hence the petitioner is constrained to file the present Second Appeal, as a third party. Hence, a huge delay of 1420 days occurred in filing the present appeal. It is neither willful nor wanton, but due to the circumstances stated above.

3.Heard the learned counsel for the petitioner and the learned counsel for the second respondent in S.A(MD)SR.No.2111 of 2015.

4.Now, the question to be decided is whether the application can be allowed or not?.

5.Time and again, the Hon'ble Supreme Court has laid down the principle for condoning the delay. Though the Court should not take lenient approach in a matter of condonation of delay, if sufficient cause is made out, the same can be condoned. The Hon'ble Supreme Court has suggested liberal, pragmatic and justice-oriented approaches, while dealing with the application for condonation of delay. It is only just and sufficient cause, that is made out by the applicant and not the length of the delay, that is to be considered, while dealing with an application for condonation of delay. If the explanation given by the petitioner is concocted or imaginary, then the Court should not expose the other side to face the unnecessary litigation.

6.Though there is no precise formula for exercising the judicial discretion, a conscious effort for achieving the consistency should be made. No doubt, the length delay cannot be viewed as a serious matter. As this Court is convinced with the reasons given by the petitioner as *bona fide*, this Court is of the opinion that the delay may be condoned. However, as stated earlier, for no fault of the second respondent in S.A(MD)SR.No.2111 of 2015, he would be exposed to unnecessary litigation after several years. In such circumstances, it would be justified to compensate the



second respondent in S.A(MD)SR.No.2111 of 2015 by directing the petitioner to pay a sum of Rs.2,000/- (Rupees Two Thousand Only) as cost to the learned counsel for the second respondent in S.A(MD)SR.No.2111 of 2015.

7. Accordingly, this petition is allowed and the delay of 1420 days in filing the appeal is condoned, subject to the payment of cost of Rs.2,000/- (Rupees Two Thousand only) to the learned counsel for the second respondent in S.A(MD)SR.No.2111 of 2015 within a period of four weeks from the date of receipt of a copy of this order, failing which this petition shall stand automatically dismissed without any further reference to this Court.

sd/-
22/08/2017

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

TO

THE PRINCIPAL SUBORDINATE JUDGE,
NAGERCOIL.

ORDER
IN
CMP(MD) Nos.3009 & 3010 of 2016 IN
SA(MD) Nos.SR2111 & 2117 of 2015
Date :22/08/2017

MKV-CM-MSA-SAR 1/29.8.2017/3P-2C