



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

Thursday, the Twenty Seventh day of July Two Thousand Seventeen
PRESENT

The Hon`ble Mrs Justice PUSHPA SATHYANARAYANA

CMP(MD) No.5400 of 2017

IN

SA(MD) No.SR23820 of 2017

P.KAMBAR

... PETITIONER/APPELLANT

Vs

J.V.RAJARAM

... RESPONDENT/RESPONDENT

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 1848 days in filing the second appeal against the judgment and decree dated 24/02/2012 made in AS.NO.202/2010 on the file of III Additional Subordinate Judge, Madurai, confirming the judgment and decree dated 27/01/2010 made in O.S.No.151/2006 on the file of District Munsif, Madurai Taluk.

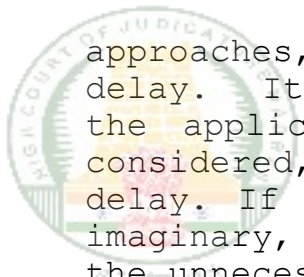
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.SURIYANARAYANAN, Advocate for the petitioner and of M/S.R.SUBRAMANIAN, Advocate on behalf of the sole Respondent the court made the following order:-

The defendant, who had lost in both the Courts below, has preferred an appeal with the delay of 1848 days. In the affidavit filed in support of the petition, it is averred that due to ill-health, he could not contact his lower Court counsel and only after receiving notice in E.P.No.11 of 2016 filed by the respondent herein, he came to know about the dismissal of the appeal suit. His lower Court counsel also did not inform him about the dismissal of the appeal. Hence, he changed the counsel and filed the above appeal with the above said delay.

3.This application is resisted by the respondent vehemently stating that it is only a suit for recovery of possession and the petitioner/defendant had lost in both the Courts and there is no valid reason assigned by the petitioner.

4.Now, the question to be decided is whether this 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.

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6. In the case on hand, the petitioner/appellant has stated that due to ill-health, he could not contact his counsel and he came to know about the dismissal of the appeal suit, only after receiving notice in the Execution Petition filed by the respondent. 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 of delay cannot be viewed as a non-serious matter. However, 1848 days of delay in filing the appeal by the petitioner would disturb the right of the respondent, whose right has been crystallized by the passage of time. As this Court is convinced with the reasons given by the petitioner, this Court is of the opinion that the delay may be condoned. However, as stated earlier, for no fault of the respondent, he would be exposed to unnecessary litigation after several years. In such circumstances, it would be justified to compensate the respondent by directing the petitioner to pay a sum of Rs.2,000/- as cost to the respondent.

7. Accordingly, this petition is allowed and the delay of 1848 days in filing the appeal is condoned, subject to the payment of cost of Rs.2,000/- (Rupees two thousand only) to the respondent through his counsel within a period of two 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/-
27/07/2017

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

TO

1 THE III ADDITIONAL SUBORDINATE JUDGE, MADURAI.

2 THE DISTRICT MUNSIF, MADURAI.

+1. C.C. to M/S.R.SURIYANARAYANAN Advocate SR.No.27610

ORDER

IN

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Date :27/07/2017