



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

Friday, the Sixth day of January Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice M.DURAISWAMY

CMP(MD) No.9020 of 2016

IN

SA(MD) No.SR17342 of 2016

VELLAIYA THEVAR

(AS THE MANAGER OF THE JOINT FAMILY) ... PETITIONER / APPELLANT

Vs

RAMASAMY THEVAR

... 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 1073 days in preferring the SA(MD) SR.No.17342 of 2016 before this Honourable Court and thus render justice.

PRAYER IN SA(MD) No.SR17342 of 2016:

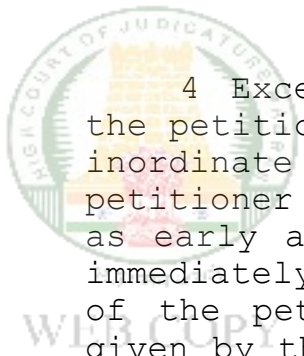
Second Appeal against the Judgment and Decree passed by the Sub-Court, Pudukkottai dated 21.08.2012 made in A.S.No.43 of 2009, confirming the Judgment and Decree made in O.S.No.212 of 1998 dated 05.10.2007 by the District Munsif Court, Aranthangi.

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. D.RAMESHKUMAR, Advocate for the petitioner and the respondent not appeared either in person or by an Advocate, the court made the following order:-

Heard the learned Counsel appearing for the petitioner.

2 There is a delay of 1073 days in filing the Second Appeal. Though notice was duly served on the respondent and his name was printed in the cause list, none appeared for the respondent.

3 In Paragraph No.3 of the affidavit filed in support of the petition, the petitioner has stated that the first Appeal was dismissed on 21.08.2012 and he obtained the certified copies of the judgment and decree on 05.03.2013. Further he has stated that the respondent has not taken any steps to recover the possession of the suit property. Further the petitioner has stated that the respondent arranged for local panchayat instead of approaching the Court for appropriate relief and that since negotiations were going on, he has not filed the Second Appeal in time.



4 Except stating that the respondent arranged for panchayat, the petitioner has not given any acceptable reason for condoning the inordinate delay of 1073 days in filing the Second Appeal. When the petitioner had obtained the certified copies of Judgment and decree as early as on 05.03.2013, he should have filed the Second Appeal immediately. The averments stated in the affidavit filed in support of the petition are bereft of details and false. The reasonings given by the petitioner cannot be accepted for condoning the delay. The ratio laid down by the Honourable Apex Court in **H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another** reported in (2015)1 Supreme Court Cases 680 clearly apply to the facts and circumstances of the present case. In paragraph Nos.24 and 25, the Honourable Apex Court has held as follows:

"24. When we Apply those principles of **Bhattacharjee case** (reported in (2013)12 SCC 649) to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the court fee at the time of filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously construed with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extend of nearly 1727 days, definitely calls for stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant



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only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

25. We, therefore, find total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the respondents in RFAs Nos.268-88 of 2012 and 319 of 2012 is also set aside and shall stand dismissed. No costs".

5. Since the petitioner has not given sufficient reason for the inordinate delay of 1073 days, the delay cannot be condoned. Accordingly, the petition is devoid of merits and the same is dismissed. Consequently, S.A(MD)No.SR17342 of 2016 is also rejected.

sd/-
06/01/2017

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

TO

1 THE SUBORDINATE JUDGE
PUDUKKOTTAI

2 THE DISTRICT MUNSIF
ARANTHANGI

JAM/20.01.2017/SS 2-KSM/ SAR I 3p-3c

ORDER
IN
CMP(MD) No.9020 of 2016
IN
SA(MD) No.SR17342 of 2016
Date :06/01/2017