



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 30.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

CMP(MD)No.9219 of 2016

in

SA(MD)No.SR20676 of 2016

1.Ramachandra Thevar

2.Jawahar

3.Sethupathy

: Petitioners/ Appellants

-Vs-.

Ramar

: Respondent/Respondent

Prayer in CMP(MD)No.9219 of 2016:

Petition filed under 41 Rule 3A, r/w order 42 R(1) of CPC praying to condone the delay of 3505 days in filing the above Second Appeal in SA(MD)No.SR20676 of 2016 on the file of the Hon'ble Court.

Prayer in SA(MD)No.SR20676 of 2016: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 26.06.2006 made in A.S.No.54 of 2005 on the file of the Sub Court, Sivagangai, confirming the judgment and decree dated 31.03.2005 made in O.S.No.76 of 2003, on the file of the District Munsif Corut, Sivagangai.

For Appellants : Mr.S.Srinivasa Raghavan

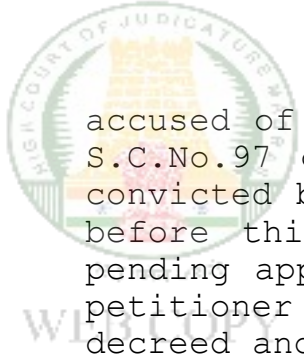
For Respondent : Mr.S.Rajasekar for
Mr.T.Lajepathi Roy

JUDGEMENT

The defendants in O.S.No.76 of 2003 on the file of the District Munsif Court, Sivagangai, have come up with the present application for condoning the delay of 3505 days in preferring the second appeal.

2.The suit was laid by the plaintiffs/respondents 1 and 2 seeking a decree of permanent and prohibitory injunction against the defendants/petitioners herein from disturbing the former's peaceful possession and enjoyment of the suit property.

3.In the affidavit filed by the 3rd petitioner, who is the son of the first petitioner, in support of the petition for condoning the delay, it is averred that his father, the first petitioner, was



accused of an offence under section 302 IPC and was facing trial in S.C.No.97 of 1999 before the Sessions Court at Sivagangai and was convicted by it on 28.05.2002. He then preferred C.A.No.823 of 2002 before this court and the first petitioner was enlarged on bail pending appeal. On behalf of the petitioners/defendants, the first petitioner had conducted the suit. On 31.03.2005, the suit was decreed and the first petitioner took efforts to prefer an appeal in A.S.No.54 of 2005 before the Sub Court, Sivagangai. The First Appellate Court too has dismissed the appeal.

4.It is further averred that the first petitioner had paid necessary charges to his advocate clerk to file copy application for obtaining certified copies and printed copies of the judgments and also the decrees of the courts below. He had also made some arrangements through him to file second appeal through his advocate, as he did not know any advocate practising in Madurai. However, it came to light that the said Advocate Clerk did not make any arrangements, whatsoever, to obtain certified copies of the judgments as well as the decrees.

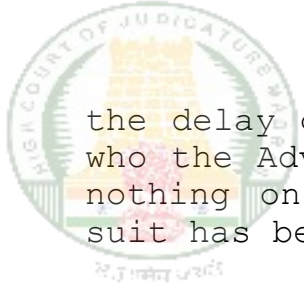
5.Be that as if may, C.A.No.823 of 2002, which the first petitioner had filed, challenging his conviction of the Sessions Court, came to be dismissed by this court as early as on 24.02.2011. Ever since, the first petitioner is in prison to undergo the remaining part of his sentence. He also moved the Hon'ble Supreme Court in SLP (Crl.) No.3984 of 2004 and also applied for bail, but was not successful in his attempt.

6.While so, the third petitioner came to know that no second appeal had been filed and that not even the copy application was filed to obtain copies of judgments. Therefore, the third petitioner had made necessary arrangements to obtain certified copies and has come forward with this appeal. In that process, a delay of 3520 days has occurred.

7.Per contra, in the counter filed by the respondents, it is contended that the petitioners had slept over their right without any justification and they have come to this court, when the respondents have started construction of a compound wall in the property in their possession, and there is no justification for the condonation of delay of 3505 days in preferring the appeal.

8.The learned counsel appearing for the petitioners argued along with the lines in the affidavit filed in aid of his application.

9.Per contra, the learned counsel appearing for the respondents argued that when the first appeal was dismissed in the year 2006, the petitioner's appeal in C.A.No.823 of 2002 was dismissed only on 24.02.2011 and in between the said two periods, the first petitioner was very much on bail and it does make any logical sense to explain



the delay of five years on that score. It is not disclosed as to who the Advocate Clerk, who the petitioner trusted, was and there is nothing on record to establish the truth of the contention. The suit has been laid only for bare injunction.

10. On a comparison of the rival submissions, I find substantial merit in the contention of the learned counsel appearing for the respondents, when he argued that the petitioners are attempting to fill a huge void of about 5 years by playing on the advocate clerk, as though they had no responsibility to follow up the matter. It is an admitted fact that till February, 2011, the first petitioner was roaming as a free man and if he had taken the responsibility to arrange for filing copy applications, he is equally expected to follow the same in preferring the second appeal. After all, he is not new to litigation, since he had already filed the first appeal before the Sub Court, Sivagangai.

11. So, I find no merit in the submission of the petitioners and this application is, therefore, dismissed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The District Munsif,
Sivagangai.

2. The Subordinate Judge,
Sivagangai.

+1 cc to Mr. S. Srinivasa Raghavan, Advocate in SR.No. 62995

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AE/JC/SAR3/29.08.2017/3P/4C

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in

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