

C.M.P.No.20135 of 2018
in
S.A.No.SR123213 of 2018

P.T.ASHA, J.,

This Civil Miscellaneous Petition has been filed for condoning the delay of 1252 days in filing the above Second Appeal.

2. The learned counsel appearing for petitioner has filed a Proof of Service, from which it is seen that the notice sent to the first respondent has been served on him, notice sent to respondents 2 & 4 returned with an endorsement, "Out of Station" and the notice sent to the third respondent returned with an endorsement, "Refused". Therefore, this Court considers that the service of notice to the respondents is complete.

3. In the affidavit filed in support of the petition, the petitioner has stated the reasons for the delay which are as follows:

(a) The learned counsel appearing for the petitioner in the lower Court had received the judgment and decree passed in A.S.No.7 of 2014 from the lower Appellate Court in time, but the same got mixed up with other papers and consequently, since the petitioner who is carrying on a cloth business for which he travelled throughout the country and comes to Tamil Nadu once in six months or one year, was not in a position to immediately contact his counsel.

(b) After receiving the judgments from his counsel he was told that the time for filing the Second Appeal is 90 days and that by reason of a wrong calculation, the petitioner has met his counsel only in August 2018, even though the judgment and decree were passed on 26.02.2015, by which time the delay of 1252 days had occurred.

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4. The suit is filed for passing a preliminary decree of mortgage and the same was decreed and in Appeal, it has been reversed on the ground that the place in question is not a notified town and the documents have not been registered.

5. Though the reasons stated by the petitioner in his affidavit are satisfactory, however, considering the fact that the delay of 1252 is inordinate, this Court feels that the delay has to be condoned only on terms and accordingly, the delay is condoned on payment of a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) to the Advocates Clerk's Association, by the petitioner on or before 19.12.2018 and the petition is allowed.

6. Post the matter under the caption, "For Reporting Compliance" on 20.12.2018.

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07.12.2018
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