



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

Tuesday, the Sixth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mrs.Justice S.RAMATHILAGAM

CMP(MD) No.10383 of 2017
IN
SA No.1804 of 2002

A.MADHAVAN PILLAI,

... PETITIONER/APELLANT/
1ST RESPONDENT/1ST DEFENDANT

Vs

1 NEELAVATHY
2 A.CHELLAMMAL,
3 A.MARY ANGEL,

... RESPONDENT/RESPONDENT/
APELLANT/PLAINTIFF

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 304 days in filing the restoration application in Second Appeal in SA.No.1804 of 2002 on the file of this Honourable Court and thus render justice.

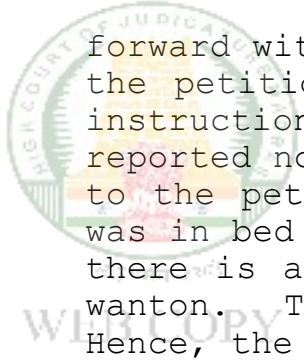
Prayer in SA. 1804/ 2002 :

to prefer this Memorandum of Grounds of Second Appeal against the Judgment and Decree dated 30/01/2001 and made in A.S.No.104/1995 on the file of the Sub-Judge, Padmanabhapuram, reversing the Judgment and decree dated 21/11/1995 and made in O.S.No.84/1994 on the file of Additional Distrcit Musif, Padmanabhapuram,

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.J.ALAGURAM JOTHI, Advocate for the petitioner and respondent no.1 not appeared in person or by an Advocate the court made the following order:-

The petitioner has come forward with this petition seeking to condone the delay of 304 days in filing the restoration application to restore the second appeal in S.A.No.1804 of 2002 which was dismissed for default on 10.11.2016.

2.The petitioner state that the 1st respondent as plaintiff had filed the suit in O.S.No.84/1994 on the file of the Additional District Munsif, Padmanabhapuram and the same was dismissed. Aggrieved over the same the 1st respondent filed the appeal in A.S.No.104/1995 and the same was allowed by reversing the trial Court Judgment and decree. Against which the petitioner has come



forward with this second appeal. On 10.11.2016, due to ill health of the petitioner, he was unable to meet his counsel and give proper instructions. Hence, the suit was dismissed for default since reported no instructions by his counsel. The bundle was handed over to the petitioner by his counsel. Thereafter, since the petitioner was in bed ridden, he was unable to arrange new counsel. Therefore, there is a delay of 304 days and the delay is neither willful nor wanton. The petitioner has a good case to succeed in the appeal. Hence, the delay may be condoned.

3.Considering the reasons stated by the petitioner and even the delay is 304 days, this Court is of the view that the petitioner can be given a chance to contest the matter on merits, in the interest of justice, for the reasons stated above, this Court is inclined to entertain this petition on payment of costs.

4.In the result, this petition will be allowed on payment of cost of Rs.500/- (Rupees Five Hundred only) to the High Court Legal Services Committee by the petitioner within a period of one week, failing which the petition shall stand dismissed automatically without further reference to this Court.

sd/-
06/03/2018

/ TRUE COPY /

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

TO

1 THE SUBORDINATE JUDGE, PADMANAPHAPURAM

2 THE ADDITIONAL DISTRICT MUNSIF
PADMANABHAPURAM.

COPY TO ; THE AUTHORISED OFFICER,
LEGAL SERVICES COMMITTEE,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.J.ALAGURAM JOTHI Advocate SR.No.3504

GJM/CM/VR/SAR-2-16.3.18-2P-5C

ORDER
IN
CMP(MD) No.10383 of 2017
IN
SA No.1804 of 2002
Date :06/03/2018