



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Tuesday, the Tenth day of April Two Thousand Eighteen
PRESENT

The Hon`ble Mr.Justice M.SUNDAR

WEB COPY

CMP(MD) No.1415 of 2018 IN SA No.851 of 2004

K.VINODHKUMAR

... PETITIONER/ APPELLANT

Vs

MINOR B.VINODHKUMAR
THRO ITS MOTHER AND GUARDIAN
SMT B.NALLAMMAL ALIAS NITHYA

... RESPONDENT/ RESPONDENT

Prayer in CMP(MD) No.1415 of 2018:

This petition filed Under Order 41 Rule 19 of Civil Procedure Code praying to restore the above Second Appeal which was dismissed for default on 10.2.2010.

PRAYER IN SA No.851 of 2004:

This appeal filed under section 100 of Civil Procedure Code against the Judgment and Decree of the District Judge, Sivagangai, dated 04.06.2002, in A.S.No.219 of 1999 reversing the Judgment and Decree of the Learned District Munsif, Tirupattur dated 25.10.1999 in O.S.No.7 of 1996.

ORDER : This petition is coming for hearing on this day and upon perusing the petition and the affidavit and the documents placed on record filed in support thereof and hearing upon the arguments of Mr.M.P.SENTHIL, Advocate for the petitioner, and Mr.M.R.SREENIVASAN, Advocate for the Respondent, and this Court made the following order:

Appellant in the main second appeal is the petitioner herein. Sole respondent in the main second appeal is the lone respondent herein.

2.This second appeal was dismissed for default on 10.02.2010. The petition in MP(MD)No.1 of 2012 in MP.SR.No.4154 of 2011 and MP.SR.No.4155 of 2011 was taken out with a prayer for condoning delay of 509 days and this Court acceded to the prayer on 30.01.2018. Order of this Court reads as follows:

This petition is filed to condone the delay of 509 days in re-presenting MP(MD)SRNo.4154 and 4155 in S.A.No.851 of 2011.

2.Heard the learned Counsel for the petitioner.

3.It is seen that the Second Appeal was heard on 10.02.2010. On that day, some defects were noted by the Registry. The Registry has directed to rectify the same.



Even on 19.03.2010, batta was not paid and in view of the non-compliance of the direction issued by this Court, the Second Appeal was dismissed automatically. Against which MP.SR.Nos.4154 and 4155 of 2011 were filed and that were also returned and in re-presenting the same, the delay occurs. The learned counsel for the petitioner submitted that the petition can be allowed on terms.

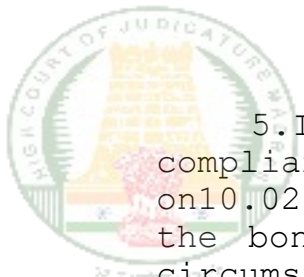
4.Considering the submission made by the learned Counsel for the petitioner, this petition is allowed on payment of Rs.3,000/- (Rupees three thousand only) to the Legal Services Authority. Registry is directed to number the application.

5.Post on 06.02.2018.

pursuant to the above order, the instant petition has been numbered and the same is before me.

3.The circumstances under which the second appeal was dismissed for default, reasons for delay and grounds for restoration are articulated in paragraphs 4 and 5 of the affidavit filed in support of the instant petition and paragraphs 4 and 5 read as follows:

'4. I respectfully submit that due to my nature of the job I was not able to concentrate in the above second appeal. In the meantime, the above second appeal came up for default on 10.02.2010 and this Hon'ble Court ordered for payment of batta to sole respondent, on or before 19.03.2010. Since neither my counsel nor myself represented for the above case, the same was dismissed for default. I respectfully submit that since I was in Singapore, I was not able to know the exact date of hearing of the above second appeal. Moreover, since my earlier counsel on record is permanently practicing at Chennai he could not be able to follow the above case. I respectfully submit that in the month of Decement, 2010 the respondents told to the neighbours that they won the case and the appeal was dismissed. Immediately, my father intimated the aforesaid facts to me over the phone and thereafter I have informed my father to trace the change of vakalat which was already got in the year 2005 and immediately tracing over the same, my father approached the present counsel and filed an application for restoration with delay on 24.01.2011. The said application was returned by the Registry for want of compliance on 14.02.2011. I respectfully submit that, now I came to India on 20.06.2012 and immediately contacted my counsel and filing this fresh affidavit in my name. In the above process there was a delay of 318 days occasioned in filing the above application. In these circumstances and in the interest of justice that this Hon'ble Court may be pleased to condone the delay of 318 days in filing the above application to set aside the exparte order passed in S.A.No.851 of 2004.



5.I respectfully submit that the non-appearance and non compliance of the order passed by this Hon'ble Court on 10.02.2010 is neither wilful nor wanton but only due to the bonafide circumstances as stated hereinabove. In these circumstances if the exparte dismissal order is not set aside I will be put to irreparable loss and much hardship. I have a very good case on merits and furthermore the value of the suit schedule property is much valuable. In these circumstances and in the interest of justice that this Hon'ble Court may be pleased to restore the above second appeal which was dismissed for default on 10.02.2010.'

4. The lone respondent in this petition has been duly served and his name (along with name of guardian) has been printed in the cause list today. The names of the sole respondent and guardian were called out aloud thrice in the Court, corridor and visitors gallery. No response. I am informed that no one has entered into appearance on behalf of the sole respondent.

5.I have heard Mr.M.P.Senthil learned counsel for the petitioner and I have perused the affidavit filed in support of the restoration petition. I am satisfied that the prayer for restoration deserves to be acceded to, as reasons given and articulated in paragraphs 4 and 5 are tenable and acceptable.

6. Owing to all that have been set out supra this petition is allowed.

7. List the main second appeal on 23.04.2018.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

TO

1. THE DISTRICT JUDGE, SIVAGANGAI.
2. THE DISTRICT MUNSIF, TIRUPATTUR.

ORDER DATED : 10.04.2018
HEARING DATE: 23.04.2018

ORDER

CMP(MD) No.1415 of 2018
IN SA No.851 of 2004

Giving directions etc., as
stated within.