



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

Wednesday, the Tenth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR

CMP(MD) No.10662 of 2017

IN

SA(MD) No.SR44682 of 2017

1 M.THANGARAJ,
2 LAKSHMI

... PETITIONERS/APPELLANTS

Vs

MARIAMMAL,

... 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 366 days in filing SA.SR.No.44682 of 2017 and pass any such further or other orders as this Honourable Court may deem fit under the facts and circumstance of the case and thus render justice.

PRAYER IN SA(MD) No.SR44682 of 2017

Second Appeal filed Under Section 100 of Civil Procedure Code, praying to prefer this Memorandum of Grounds of Second Appeal against the Judgment and Decree passed by the Honourable Sub Court, Srivilliputhur in A.S.No.14 of 2012 dated 09.08.2016 modifying the judgment and Decree of the Honourable District Munsif Court, Srivilliputhur in O.S.No.272/2008 on 28.10.2011.

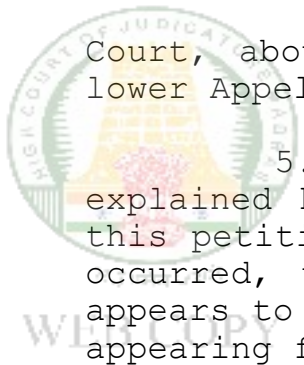
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.LAKSHMI GOPINATHAN, Advocate for M/S.POLAX LEGAL SOLUTIONS, Advocate for the petitioners and of MR.K.C.RAMALINGAM, Advocate for the Respondent the court made the following order:-

This petition is filed to condone the delay of 366 days in filing the Second Appeal in S.A.(MD)No.SR44682 of 2017.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

3. The defendants in the Suit has filed the above Second Appeal against the Judgment and Decree passed by the learned Subordinate Judge, Srivilliputhur, in A.S.No.14 of 2012, dated 09.08.2016.

4. The learned counsel for the petitioners submitted that the petitioners are not literates and that therefore, they were misled by the counsel who appeared before the lower Appellate



Court, about the nature of the Judgment that was rendered by the lower Appellate Court.

5. It is true that the delay has not been properly explained by the petitioners in the affidavit filed in support of this petition. Except narrating the facts about the delay that had occurred, there is no explanation which is required. However, it appears to be an inadvertent mistake committed by the counsel who is appearing for the petitioners.

6. Going by the records, this Court is convinced that the Second Appeal has been filed with *bonafide* intention to prosecute the same. Hence, this Court is inclined to allow this petition on terms.

7. As a result, the petition is allowed and the delay of 366 days in filing the above Second Appeal is condoned on condition that the petitioners pay a sum of Rs.5,000/- (*Rupees Five Thousand only*) to the learned counsel appearing for the respondent within a period of two weeks from the date of receipt of a copy of this order.

sd/-
10/01/2018

/ TRUE COPY /

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

TO

1 THE SUBORDINATE JUDGE, SRIVILLIPUTHUR

2 THE DISTRICT MUNSIF, SRIVILLIPUTHUR

+1. C.C. to M/S.POLAX LEGAL SOLUTIONS Advocate SR.No.548

GJM/CSL/RR/SAR-I-18.1.18-2P-4C

ORDER
IN
CMP(MD) No.10662 of 2017
IN
SA(MD) No.SR44682 of 2017
Date :10/01/2018