



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

Tuesday, the Ninth day of January Two Thousand Eighteen

WEB COPY

PRESENT

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

CMP(MD) No.10786 of 2017

IN

SA(MD) No.SR41202 of 2017

PONRUBY MERCY

... PETITIONER/PETITIONER

Vs

PONNUTHAI,

... 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 1304 days in filing the above Second Appeal (MD) SR.41202/17 and pass any other direction deemed fit to the fact and circumstances of the case and thus render justice.

Prayer in SA(MD) No.SR41202 of 2017:

to prefer this Memorandum of Grounds of Second Appeal against the Common Judgment and Decree passed in A.S.No.39/2011 on the file of Subordinate Judge, Valliyoor dated 18.12.2013 confirming the Judgment and Decree passed in O.S.No.12 of 2007 on the file of the Principal District Munsif Court, Nanguneri dated 31.01.2011

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.M.VISHNUVARTHANAN, Advocate for the petitioner and of MR.H.ARUMUGAM, Advocate for the Respondent, the court made the following order:-

This petition is filed to condone the delay of 1304 days in filing the above second appeal as against the judgment and decree in A.S.No.39 of 2011, dated 18.12.2013, on the file of the learned Subordinate Judge, Valliyoor.

2. The respondent has filed a suit in O.S.No.12 of 2007 on the file of the learned District Munsif, Nanguneri for declaration of title and recovery of possession in respect of the suit scheduled properties.

3. It is seen that the suit has been decreed by the trial Court, which was confirmed in A.S.No.39 of 2011, by the learned Subordinate Judge, Valliyoor. As against the judgment and decree dated 18.12.2013, passed by the lower appellate Court, the



petitioner has preferred the above second appeal with huge delay. The suit was filed in the year 2007 and the lower Appellate Court has confirmed the decree of trial Court by judgment dated 18.12.2013.

4. The petitioner herself has admitted that the respondent has filed the execution petition in E.P.No.1 of 2016 in O.S.No.12 of 2007 before the Additional District Munsif Court, Nanguneri and the same is pending. It is to be noted that the petitioner was appearing before the Execution Court and the case was being heard from June'2016 and repeatedly adjourned, at the request of the petitioner on the ground that she has preferred the second appeal before this Court as against the judgment of the lower appellate Court.

5. Thus, the petitioner delayed the proceedings even before the Execution Court, stating that an appeal has been preferred before this Court. However the appeal was filed only on 07.10.2017, nearly after 17 months. Therefore, the petitioner has misrepresented before the Execution Court as if the appeal has been filed on 29.10.2016 itself. The delay is, therefore, not properly explained by the petitioner. However the learned Counsel for the petitioner states that the inordinate delay was not on account of petitioner's wilful negligence, but, due to lack of proper communication.

6. Having regard the fact that serious prejudice has been caused to the respondents, this Court is inclined to allow this petition on terms.

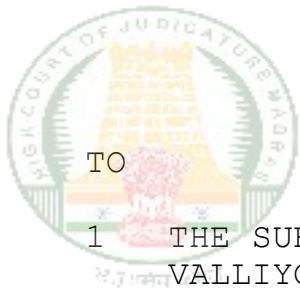
7. As a result, this petition is allowed and the delay is condoned on condition that the petitioner pay a sum of Rs.50,000/- to the respondent within a period of four weeks from the date of receipt of a copy of this order and produce a memo before the Registry, to that effect.

8. On receipt of the same, Registry is directed to number the second appeal, if the papers are otherwise in order.

sd/-
09/01/2018

/ TRUE COPY /

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



TO

1 THE SUBORDINATE JUDGE,
VALLIYOOR

2 THE PRINCIPAL DISTRICT MUNSIF
NANGUNERI

ORDER

IN

CMP (MD) No.10786 of 2017

IN

SA (MD) No.SR41202 of 2017

Date :09/01/2018

SMA/CM-VR/SAR-1/22.01.2018:2P/3c