



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

Wednesday, the Seventh day of February Two Thousand Eighteen

PRESENT

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

CMP(MD) No.11888 of 2017

IN

SA(MD) No.SR49295 of 2017

C.KUTHALINGAM

... PETITIONER/APPELLANT

Vs

R.MEENAKSHI SUNDARAM

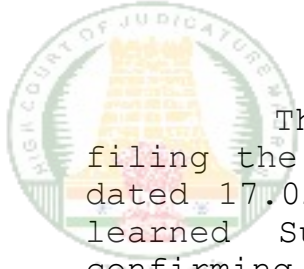
... RESPONDENT/RESPONDENT

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 567 days in filing the above Second Appeal as against the Judgment and Decree dated 17.02.2016 passed in A.S.No.47 of 2012 on the file of the Learned Subordinate Judge, Ambasamudram, Tirunelveli District confirming the Judgment and Decree dated 29.06.2012 passed in O.S.86 of 2009 on the file of the Learned District Munsif Cum Judicial Magistrate, Cheranmahadevi, Tirunelveli District.

PRAYER IN SA(MD) No.SR49295 of 2017:

To set aside the judgment and Decree dated 17.02.2016 passed in A.S.No.47 of 2012 on the file of the Learned Subordinate Judge, Ambasamudram, Tirunelveli District confirming the judgment and Decree dated 29.06.2012 passed in O.S.No.86 of 2009 on the file of the learned District Munsif Cum Judicial Magistrate, Cheranmahadevi, Tirunelveli District by allowing this Second Appeal.

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.G.RAMANATHAN, Advocate for the petitioner and of <https://hcservices.ecourts.gov.in/hcservices/> MR.S.S.THESIGAN, Advocate for the respondent, the court made the following order:-



This petition is filed to condone the delay of 567 days in filing the above Second Appeal as against the Judgment and Decree, dated 17.02.2016 passed in A.S.No.47 of 2012, on the file of the learned Subordinate Judge, Ambasamudram, Tirunelveli District, confirming the Judgment and Decree, dated 29.06.2012 passed in O.S.No.86 of 2009, on the file of the learned District Munsif-cum-Judicial Magistrate, Cheranmahadevi, Tirunelveli District.

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

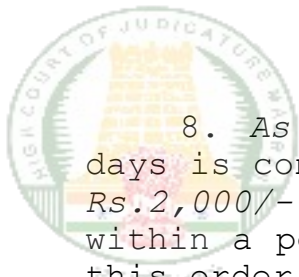
3. The petitioner has filed an affidavit earlier, dated 12.02.2017 and he has also filed a better affidavit, dated 01.02.2018 explaining the delay. It is admitted by the petitioner that the Judgment has been pronounced on 17.02.2016. Since the petitioner's counsel failed to apply copy application in time, it is stated that he was not informed and he did not know about the receipt of the certified copy of the Judgment and Decree of the lower Appellate Court. It is also stated that due to the petitioner's illness, he was not able to contact his counsel. Only when he received notice in the Execution proceedings filed by the respondent herein, it is stated in the affidavit that the petitioner once again contacted his counsel and filed an Appeal, after tracing out the certified copy of the Judgment and Decree which were misplaced in his Advocate's office.

4. Though the delay is inordinate, this Court is able to see that there is some justification and explanation for the delay to the satisfaction of this Court.

5. The learned counsel for the respondent has pointed out that the delay has not been properly explained in the sense that each and every delay has not been explained properly. Further, it is stated that the affidavit filed in support of this petition is bereft of particulars with regard to dates and events that are mentioned in the better affidavit. When it is admitted that the petitioner received the notice in the Execution petition in the month of October, 2017, it is stated by the learned counsel for the respondent that there must be an explanation from that day.

6. It is true that the affidavit filed in support of this petition does not contain the relevant dates so as to assess that the delay has been properly explained with reference to each and every day. Considering the fact that this Court does not find any circumstances to hold that there is willful negligence in prosecuting this Appeal, this Court is inclined to allow this petition.

7. Having regard to the length of the delay and lack of clarity in the affidavit filed in support of this petition, this Court is inclined to allow the petition subject to terms.



8. As a result, the petition is allowed and the delay of 567 days is condoned, on the condition that the petitioner pays a sum of Rs.2,000/- (Rupees Two Thousand only) towards costs to the respondent within a period of two weeks from the date of receipt of a copy of this order.

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sd/-
07/02/2018

/ TRUE COPY /

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

TO

- 1 THE SUBORDINATE JUDGE
AMBASAMUDRAM, TIRUNELVELI DISTRICT
- 2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
CHERANMAHADEVI, TIRUNELVELI DISTRICT.

ORDER
IN
CMP (MD) No.11888 of 2017
IN
SA (MD) No.SR49295 of 2017
Date :07/02/2018

pmu
SH/RR-CSL/SAR-2:14.02.2018:3P/3C