



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

WEB COPY

CMP(MD) No. 2681 of 2018
in
SA(MD) SR.No. 24051 of 2017

Muniyandi

.. Petitioner

Vs.

1. Marimuthu

2. Kamaraj (van driver)

2. Lakshmi Ammal

.. Respondents

Petition is filed under Section 5 of the Limitation Act to condone the delay of 3362 days in filing the above second appeal against the judgment and decree dated 02.04.2008 made in AS.No.32 of 2006 on the file of the Principal District Court, Theni, in so far as confirming the judgment and decree dated 14.12.2005 made in O.S.No.231 of 1999 on the file of the Sub Court, Periyakulam for partition of 3/6 share in favour of the plaintiffs in respect of 1st item of suit schedule property is concerned.

For Petitioner : Mr.K.Appadurai

O R D E R

This petition has been filed praying to condone the delay of 3362 days in filing SA(MD)SR.No.24051 of 2017 on the file of this Court.

2. According to the petitioner, the petitioner has suffered judgment and decree in O.S.No.231 of 1999 on the file of the Sub Court, Periyakulam on 14.12.2005. Challenging the same, he has filed an appeal before the Principal District Court, Theni in A.S.No.32 of 2006. The said appeal was partly allowed on 02.04.2008. Aggrieved over the same, the petitioner has filed the present Second Appeal with a delay of 3362 days.

3. The learned counsel appearing for the petitioner submitted that immediately after pronouncing the judgment in the appeal on 02.04.2008, the petitioner requested his lower Court counsel to get certified copy of the judgment and decree to file second appeal before this Court. But, there was no response from the petitioner's counsel. Subsequently, after enquiry, the petitioner came to know that his counsel died and finally, through a Clerk from the lower Court, the petitioner has collected the appeal papers and filed the present second appeal. In the above circumstances, the delay mentioned in the petition has occurred



and the same is neither wilful nor wanton. The learned counsel further submitted that even though there is an inordinate delay in filing the second appeal, this Court may liberally consider the petitioner's case and no prejudice would cause to the respondents.

WEB COPY

4. It is seen from the records that as per judgment and decree passed in A.S.No.32 of 2006, the respondents 1 and 2 herein/defendants 2 and 3 have filed E.P.No.6 of 2014, in which, notice has been served to the petitioner. The petitioner has also entered appearance in the aforesaid execution petition and filed counter affidavit. On a perusal of the counter affidavit, it is seen that the petitioner has not specifically stated about the facts, which have been stated in the present application for condoning the delay. Therefore, the reasons stated in the petition cannot be accepted and there is no sufficient cause for condoning the inordinate delay. Further, in similar circumstances, the Hon'ble Supreme Court in the case of **H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another** reported in (2015) 1 Supreme Court Cases 680, has held as follows:

"23. We may also usefully refer to the recent decision of this Court in *Esha Bhattacharjee* where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp.658-59)

"21.4 (iv) No presumption can be attached to deliberate causation of delay, but gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

...

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.



21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

WEB COPY

24. When we apply those principles of Bhattacharjee case to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents....."

5. Since there is no ground made out in the present petition for condoning the huge delay of 3362 days and also in the light of the above said decision of the Hon'ble Supreme Court, this petition cannot be entertained.

6. In fine, this petition is dismissed. No costs. Consequently, SA(MD)SR.No.24051 of 2017 is rejected.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Theni.

2. The Sub Judge,
Periyakulam.

+1cc to Mr.K.Appadurai, Advocate Sr.No.60697

MJ

VB/RSK/SAR4/28/04/2018/3P/4C

CMP(MD)No.2681 of 2018

in

SA(MD)SR.No.24051 of 2017

11.04.2018