



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

Wednesday, the Thirty First day of January Two Thousand Eighteen

WEB COPY

PRESENT

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

CMP(MD) No.12036 of 2017

IN

SA(MD) No.SR49297 of 2017

C. KUTHALINGAM

... PETITIONER/APPELLANT

Vs

T. RAMARAJ

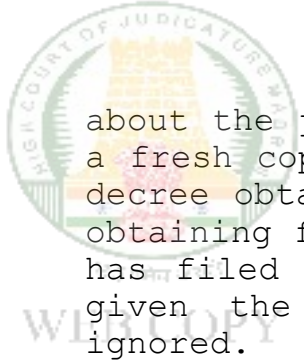
... RESPONDENT/RESPONDENT

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 201 days in filing the above Second Appeal as against the Judgment and Decree dated 17.02.2016 passed in A.S.No.48 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.84 of 2009 on the file of the Learned District Munsif Cum Judicial Magistrate, Cheranmahadevi, Tirunelveli Dist.

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.G.RAMANATHAN, Advocate for the petitioner and of M/S.S.S.THESIGAN, Advocate on behalf of the Respondent, the court made the following order:-

This petition is filed to condone the delay of 201 days in filing the second appeal as against the judgment and decree dated 17.02.2016 passed in A.S.No.48 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.84 of 2009 on the file of the learned District Munsif Cum Judicial Magistrate, Cheranmahadevi, Tirunelveli District.

2.The petitioner states that his lower Court Counsel failed to apply copy application in time and that after receiving the judgment and decree of the Courts below, they were misplaced in the Advocate's Office by his clerk. It was further stated that due to the petitioner's illness, he was not able to contact his counsel and after the receipt of notice in the execution proceedings filed by the respondents, it is stated by the petitioner that he enquired



about the judgment and decree of the Courts below and that he filed a fresh copy application, as the certified copy of the judgment and decree obtained earlier were not traceable. It is stated that after obtaining fresh copy of the judgment and decree, the present Counsel has filed the above second appeal. Though, the petitioner has not given the details about the dates, the explanation cannot be ignored.

3.The respondents have filed a counter, denying the allegations and opposed the application only on the ground that the petitioner has not given any dates and that therefore the Court should hold that each and every dates has not been explained. In the counter affidavit, the respondents has not given any factual details so as to contradict the statement which was made by the petitioner in the affidavit filed in support of the petition. Applying the settled principle of law, though the delay has been explained, merely because, the petitioner has not produced any material to prove the statement which he has made in the affidavit, this Court is of the view that the petition to condone the delay cannot be dismissed. It is also the settled position that the Court should always be lenient while condoning the delay, unless there is no explanation for the delay. Considering the fact that the delay is inordinate, this Court is inclined to allow this petition on terms.

4.As a result, this petition is allowed and the delay is condoned on condition that the petitioners pay a sum of Rs.1,000/- (Rupees One Thousand only) to the respondents within a period of two weeks from the date of receipt of a copy of this order.

5.Registry is directed to number the second appeal, if the papers are otherwise in order, after showing proof of payment by the petitioner.

sd/-

31/01/2018

/ 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.12036 of 2017
IN

SA(MD) No.SR49297 of 2017

Date :31/01/2018