



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

Thursday, the Twenty Sixth day of April Two Thousand Eighteen
PRESENT

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

CMP(MD) No.900 of 2018
IN AS(MD) No.SR23540 of 2016

1 JANNATH BEEVI,
2 SYED IBRAHIM,
3 SEENI MEHARAJBANU,

... PETITIONERS/APPELLANTS

Vs

1 MOHIDEEN ABDUL KADHAR,

2 THROUGH THE COMMISSIONER,
PARAMAKUDI MUNICIPALITY,
GANDHIJI ROAD,

PARAMAKUDI, RAMANATHAPURAM DISTRICT. ... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 554 days in filing the Appeal Suit in AS.SR.No.23540 of 2016.

PRAYER IN AS(MD) No.SR23540 of 2016:

to set aside the decree and judgment passed in O.S.No.1 of 2011, on the file of the Additional District Judge, Ramanathapuram, dated 04.02.106 and dismiss the suit in limine with cost and thereby render justice.

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.K.R.LAXMAN, Advocate for the petitioner and of MR.D.SENTHIL, Advocate for R1 and MR.M.KANNAN, Advocate for R2, on behalf of the Respondents the court made the following order:-

This petition is filed to condone the delay of 554 days in filing the appeal suit in A.S.(MD)No.SR.23540 of 2016, as against the judgment and decree in O.S.No.1 of 2011, on the file of the Additional District Judge, Ramanathapuram.

2.The reasons stated in the affidavit filed in support of this petition is that the appeal suit was filed originally in time on 13.06.2016 and that the certified copy of the judgment and decree originally filed was somewhere lost and that therefore, the petitioner applied for new certified copy of the judgment and decree and the papers were represented on 25.10.2016. Going by the judgment and decree that was obtained later, the delay was calculated and the learned Counsel for the petitioner therefore, submitted that the delay is nether wilful nor wanton.



3.The learned Counsel for the respondents raised some serious objections and submitted that the contentions of the petitioner for condoning the inordinate delay cannot be accepted and the petitioner has not taken steps to represent the papers, after getting permission from the Court to reconstruct the papers, if really, the original certified copy of the judgment and decree were filed along with the papers, when it was represented on 13.06.2016.

4.This Court is unable to see any wilful negligence on the part of the appellant to prosecute the appeal. At the moment, the Court has no material to disbelieve the case of the petitioner. Though it is possible for the respondent to disprove the case by getting the Court records. With regard to certified copy that was issued by the Court below. In this circumstances, this Court is of the view that the delay has been properly and satisfactorily explained. Hence, this petition is allowed on condition that the petitioner pay a sum of Rs.2,000/- (Rupees Two Thousand) to the first respondent within a period of two weeks from the date of receipt of a copy of this order.

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

sd/-

26/04/2018

/ TRUE COPY /

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

TO

THE ADDITIONAL DISTRICT JUDGE, RAMANATHAPURAM

Copy to:

THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

ORDER

IN

CMP(MD) No.900 of 2018

IN

AS(MD) No.SR23540 of 2016

Date :26/04/2018