



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

Wednesday, the Fourteenth day of March Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mrs.Justice S.RAMATHILAGAM

CMP(MD) No.2968 of 2017

IN

SA(MD) No.1029 of 2005

1 NAMBIKKAI
2 S.JEROLD RAJA
3 S.ROBERT

... PETITIONERS/APPELLANTS

Vs

1 AGASTIN
2 AMALRAJ

... RESPONDENTS/RESPONDENTS

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 75 days in filing the restoration petition to restore the above SA(MD) 1029/2005 which was dismissed for default on 04/11/2016.

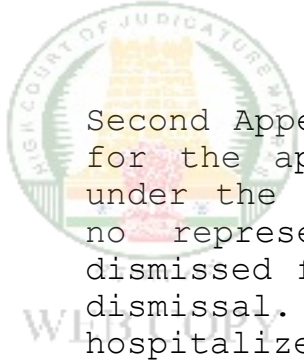
PRAYER IN SA(MD) No.1029 of 2005

To allow the second appeal and set-aside the decree and judgement dated 17.03.2004 passed in A.S.No.167 of 1999 by the Additional District Judge cum sessions court (Fast Track) Dindigul thereby confirming the decree and judgment dated 05.03.1997 passed in O.S.No.33 of 1993 by the Principal Dated at Madurai.

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.B.PRAHALAD RAVI, Advocate for the petitioner and of MR.S.NATARAJAN, Advocate on behalf of the 1st Respondent, the court made the following order:-

The petitioners have come forward with this petition seeking to condone the delay of 75 days in filing the restoration application to restore the second appeal in S.A(MD).No.1029 of 2005 which was dismissed for default on 04.11.2016.

2.The petitioners state that the petitioners have filed this Second Appeal against the judgment and decree passed in A.S.No.167 of 1999 dated 17.03.2004 on the file of the Additional District Judge cum Session Judge (Fast Track Court Judge), Dindigul confirming the decree and judgment dated 05.03.1997 passed in O.S.No.33 of 1993 by the Principal Sub Court, Dindigul. When the



Second Appeal was posted on 03.11.2016, there was no representation for the appellants and hence, the case was posted on 04.11.2016 under the caption 'for dismissal'. On 04.11.2016, since there was no representation for the appellants, the Second Appeal was dismissed for non prosecution. The petitioner was not aware of the dismissal. Since the previous counsel of the petitioner was hospitalized for his treatment, he cannot represent the appellant and inform the same to the petitioner. Hence the delay of 75 days has been occurred in filing the restoration petition and the same may be condoned.

3.The learned counsel for the respondent present and opposing to entertain this petition by way of filing counter.

4.Considering the reasons stated by the petitioners and even the delay is 75 days, this Court is of the view that the petitioners can be given a chance to contest the matter on merits, in the interest of justice, for the reasons stated above, this Court is inclined to entertain this petition on payment of costs.

5.In the result, this petition is allowed on payment of cost of Rs.500/- (Rupees Five Hundred only) to the High Court Legal Services Committee by the petitioner within a period of two weeks, from the date of receipt of a copy of this order, failing which the petition shall stand dismissed automatically without further reference to this Court.

sd/-

14/03/2018

/ TRUE COPY /

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

TO

1 THE ADDITIONAL DISTRICT JUDGE CUM SESSIONS JUDGE,
(FAST TRACK), DINDIGUL

2 THE PRINCIPAL SUBORDINATE JUDGE, DINDIGUL.

COPY TO : THE OFFICER INCHARGE, LEGAL AID SERVICES AUTHORITY,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CMP(MD) No.2968 of 2017

IN

SA(MD) No.1029 of 2005

Date :14/03/2018

PK/RR/SAR-1/06.04.2018 : 2P/4C