



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

Tuesday, the Twentieth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mrs.Justice S.RAMATHILAGAM

CMP (MD) No.2992 of 2016

IN

SA No.1533 of 2003

MUTHIAH

... PETITIONER

Vs

1 NIRMALA KRISHNAKUMAR
2 KALYANASUNDARI
3 BABY
4 M.S.MOHAMMED IBRAHIM UMMAL
5 N.T.S. MOHAMED SALIK HAJI

... RESPONDENTS

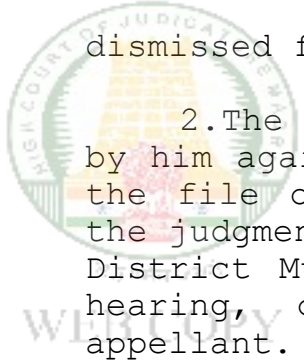
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 982 days delay in filing the restoration petition in S.A.1533/2003 dated 09.04.2013 and thus render justice.

Prayer in SA. 1533/ 2003 :

Second Appeal filed under section 100 of Civil Procedure Code against the Judgment and Decree dated 02/01/2003 made in A.S.No.200/2001 on the file of the Principal District Judge, Tirunelveli confirming the Judgment and Decree dated 22/02/2001 in O.S.No.247/1998 on the file of the Principal Subordinate Judge, Tirunelveli.

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.N.C. ASHOK KUMAR, Advocate for the petitioner, the court made the following order:-

<https://hcservices.ecourts.gov.in/hcservices/>
The petitioner has come forward with this petition seeking to condone the delay of 982 days in filing the restoration application to restore the second appeal in S.A.No.1533 of 2003 which was



dismissed for default on 09.04.2013.

2.The petitioner states that the above second appeal was filed by him against the judgment and decree passed in A.S.No.200/2001 on the file of the Principal District Judge, Tirunelveli, confirming the judgment and decree passed in O.S.No.247/1998 on the file of the District Munsif, Tirunelveli. When the second appeal came up for hearing, on 09.04.2013, there was no representation for the appellant. Hence the Second appeal was dismissed for non prosecution. Only in the year 2016 only, the petitioner came to know about the dismissal of the Second Appeal. Hence, the delay of 982 days occurred. The delay is neither willful nor wanton. Hence the delay may be condoned.

3.The learned counsel for the respondent is present and opposed to entertain this petition.

4.Heard both sides.

5.It is perused that the Second Appeal was dismissed on 09.04.2013 and the petitioner enquired about the status of the case only in the year 2016. After dismissal of the Second Appeal, E.P.No.194/2014 in O.S.No.179/1979 was filed and delivery was also ordered. The inordinate delay of nearly 3 years has been occurred, for which the reason stated by the learned counsel is that he is not also aware of the proceedings and he is not a party in the suit proceedings.

6.On perusal of records it is learnt that when the Second Appeal was posted for final hearing on 27.03.2013 and 05.04.2013, there was no representation for the appellants. Hence, the case was posted on 09.04.2013 under the caption 'for dismissal'. On that day also there was no representation. Hence, the said appeal was dismissed for non prosecution. The representation is being made by the petitioner is that he is not a party in the suit and he is also unable to contact his counsel and the fact of the proceedings was not brought to the notice of this petitioner by his counsel. Hence, the delay occurred and the petitioner sought for condone the delay of 982 days. Considering the facts of the case and the status of the petition and the delay is enormous, this Court is not inclined to entertain this petition.

6.In the result, this petition is dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar



TO

1 THE PRINCIPAL DISTRICT JUDGE,
TIRUNELVELI.

2 THE PRINCIPAL SUB JUDGE,
TIRUNELVELI.

WEB COPY

Copy to : The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

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MV:SKN-RSK:SAR4:26/04/2018/3P/4C

C.M.P(MD) .No.2992 of 2016
in
S.A.No.1533 of 2003

20.03.2018