



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

Tuesday, the Twenty Seventh day of March Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mrs.Justice S.RAMATHILAGAM

CMP(MD) No.3564 of 2016

IN

SA No.321 of 2004

KANNAN

... PETITIONER/PETITIONER/
APPELLANT

Vs

1 SAROJA
2 CHANDRA
3 SAKTHI
4 RAJAMANI
5 KRISHNAVENI
6 MUTHAMMAL (DIED)
7 PARTHASARATHY

... RESPONDENTS/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 1862 days caused in representation of the above M.P.S.R.No.44960/2010 and thus render justice.

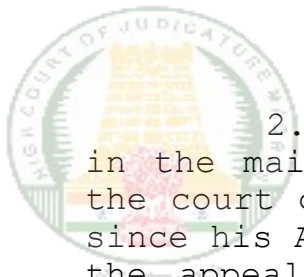
PRAYER IN SA No.321 of 2004

To against the judgment and decree dated 09.09.2004 passed in Appeal suit No.80 of 2003 by the Principal District Court, Dindigul confirming the judgment and decree dated 27.02.2003 passed in Original Suit No.277 of 1994 by the Principal Sub Court, Dindigul.

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. V.RAGHAVACHARI, Advocate for the petitioner and of the Respondent not appeared either in person or by an Advocate, court made the following order:-

This Civil Miscellaneous petition has been filed by the petitioner to condone the delay of 1862 days in representing the M.P.SR.44960 of 2010 in S.A.321 of 2004.

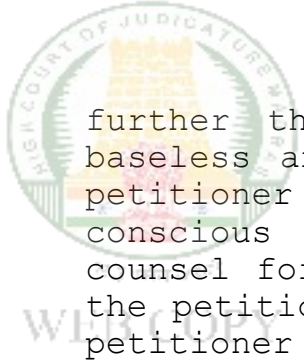
<https://hcservices.ecourts.gov.in/hcservices/>



2. The petitioner herein has stated that he is the appellant in the main Second Appeal and the Second Appeal was listed before the court on 29.09.2010 and when the matter was called on that day, since his Advocate and his juniors were engaged in some other court, the appeal was dismissed for non prosecution. Since he filed a restoration application on 26.10.2010 in M.P.SR.44960 of 2010 and the said petition was returned on 10.11.2010 for some defects and the same was represented on 10.02.2011 with a delay of 83 days. Without complying the defects and without serving copy to the other side counsel, again, the same was returned on 06.05.2011. Further the petitioner has stated that in the year 2015 in order to take steps for the deceased 6th respondent, the petitioner had filed a memo and the same was returned on 18.02.2015 with an endorsement stating that the case was disposed of on 29.09.2010. It is also represented that only on the return of the memo, he came to know that the restoration application was not yet numbered and he was also informed by the Advocate Clerk that due to the renovation work in the advocate's office, the SR bundle is not traceable. Only on receiving a letter from his Advocate's office about listing of this petition and his requirement of filing petition to represent the same into the Court he came to understand that the restoration petition was not numbered. Further he states that the returned petition from the Registry was not taken up by him and hence the delay of 1862 days has occurred in representing the said petition. Hence the petitioner argues that the delay in filing application to condone the delay in representing the restoration petition occurred purely on the part of the Advocate's Clerk.

3. From the above averments the petitioner has stated that in representing the M.P.SR.No.44960, there occurred 83 days delay and the same was returned on 06.05.2011 and the said petition could not be represented. The petitioner has not stated any reason or any details regarding the delay that occurred till 09.02.2015 when he filed a memo to record the death of his mother, at that time only he came to understand that the case was disposed on 29.09.2010. The reason stated by the petitioner for such a huge delay in representing the restoration application is not a fair one. After the return of the application on 06.05.2011 and till filing of the memo regarding the death of his mother in the year 2015, the reason stated by the petitioner is that there is a renovation work in the Advocate's office and the fact that his restoration application was not numbered was known to him only when he filed a memo in the year 2015. There is no bonafide reason stated by the petitioner for such a huge delay of 1862 days. It is also observed from the perusal of records that the suit was filed in the year 1994 and disposed on 27.02.2003 and against which A.S.No.80 of 2003 also disposed on 09.09.2004 and Second Appeal was listed only in the year 2010 and at that time there was no representation. Hence, the said appeal was dismissed.

4. Considering the filing of the suit and the disposal of the first appeal and filing a petition to restore the appeal and



further the abnormal delay of 1862 days are all seemed to be baseless and not considered to be a bonafide one. If really the petitioner is very much aggrieved by the order and he is very much conscious about the proceedings, he would have instructed the counsel for proceeding with the case in time. The reason stated by the petitioner is not appeared to be a sincere effort taken by the petitioner for proceeding with the case in time.

5.Since, there is no merits in the petition, this petition is dismissed.

sd/-
27/03/2018

/ TRUE COPY /

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

TO

- 1 THE PRINCIPAL DISTRICT JUDGE, DINDIGUL
- 2 THE SUBORDINATE JUDGE, DINDIGUL

ORDER
IN
CMP(MD) No.3564 of 2016
IN
SA No.321 of 2004
Date :27/03/2018

PK/CM-VR/SAR-1/09.04.2018 : 3P/3C