



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.09.2018

DELIVERED ON : 26.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.P. (MD) Nos. 6238 and 6239 of 2018

in

S.A. (MD) No. SR6223 and SR6227 of 2016

Joseph Raj

.... Petitioner in both Petitions

Vs.

Muthiah Nadar (Died)

Jose

.... Respondent in both petitions

Prayer in C.M.P. (MD) Nos. 6238 and 6239 of 2018:- Petitions filed under Section 5 of Limitation Act, to condone the delay of 4746 days in filing the Second Appeals.

Prayer in S.A. (MD) Nos. SR6223 and SR6227 of 2016:- Appeals filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree in A.S.Nos. 24 and 25 of 2000 on the file of the learned Subordinate Judge, Padmanabhapuram dated 10.02.2003 reversing the Judgment and Decree in O.S.Nos. 91 of 1995 and 671 of 1994 before the Principal District Munsif, Padmanabhapuram dated 22.07.1998.

For Petitioner : Mr. R. Sundar

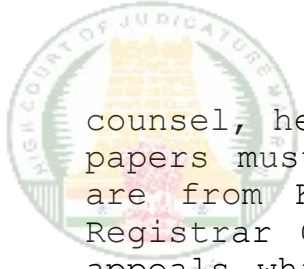
For Respondent: Mr. V. M. Bala Mohan Thampi

COMMON ORDER

Heard Mr. R. Sundar, learned counsel appearing for the petitioner and Mr. V. M. Bala Mohan Thampi, learned counsel appearing for the respondent.

2. These petitions have been filed to condone the delay of 4746 days in filing the Second appeals against the Judgment and Decree in A.S.Nos. 24 and 25 of 2000 on the file of the learned Subordinate Judge, Padmanabhapuram dated 10.02.2003.

3. On the side of the petitioner, it is stated that the petitioner gave the papers for filing the second appeals to his counsel Mr. Gopakumar, learned counsel at Thuckalay, who in turn has sent the papers to the Chennai counsel Mr. Murugamanickam and the petitioner was informed that the second appeals were filed in the Principal Bench of Madras High Court and that S.A.S.R. Nos. 84573 and 84574 of 2003 were given. When the petitioner enquired about the case, the local counsel informed him that the appeals were pending before the Principal Bench. When the petitioner wrote to the Chennai



counsel, he replied that the appeals were filed in time and that the papers must have been transferred to Madurai Bench as the appeals are from Kanyakumari District. When the petitioner addressed the Registrar General, High Court of Madras, he was informed that the appeals which were filed before the Principal Bench were returned. All the efforts taken by the petitioner to trace out the bundle proved futile and hence to avoid further delay, he applied for Certified copy of Judgment and Decree on 07.03.2012 and 10.08.2012 and has obtained printed copies of Judgment on 28.02.2012. But the certified copies were missing in the previous counsel's office. There was a delay of 4746 days in filing the second appeals. Though the petitioner knocked all the doors, all his efforts went in vain. The respondent is dead and the respondent's legal heirs are shown as parties. A petition to accept the cause title is also filed before this Court.

4. On the side of the respondent, it is stated that in August 2004, the Chennai counsel has addressed the local counsel. It is stated that the Chennai counsel has addressed the Tirunelveli counsel on 04.08.2008 stating that party is not interested in the case as no fees was paid to him. This copy of the letter was filed by the petitioner and how the petitioner got this letter is not stated in the petition.

5. It is stated that on 27.03.2018, the Chennai counsel has sent a reply letter stating that he has not received any fees and that he has filed the second appeals in time. Even in the petition, it is stated that the petitioner has filed the copy application in the year 2012 and he got the printed copy of the document on 08.02.2016. These petitions are filed only in the year 2016 after a lapse of four years.

6. On the side of the respondent, it is stated that the respondent is dead and the properties were transferred to third parties. At present, the respondent is not the owner of the property. Even though these matters are stated in the counter itself, the petitioner has not impleaded the purchaser as parties to these petitions and prayed the petition to be dismissed.

7. A perusal of the records reveals that there is a delay of more than 12 years in filing the second appeals. The two suits filed are O.S.No.671 of 1994 and O.S.No.91 of 1995. The common Judgment and Decree was pronounced in both the suits in O.S.No.671 of 1994 and O.S.No.71 of 1995 dated 22.07.1998. Against the Judgment and Decree, the petitioner has filed an appeals in A.S.No.24 and 25 of 2000 on the file of learned Subordinate Judge, Padamanapuram. The appeals were dismissed. Against the Judgment, after a lapse of 12 years, the petitioner has come forward with the present second appeals. The reasons stated by the petitioner is that the petitioner was under the impression that the second appeals were filed in time and it is the fault of the lower Court Advocate and that the lower Court Advocate has failed to inform the petitioner about the return



of the second appeals and that though fees was paid to the lower Court Advocate, he has failed to send the fees to the Chennai Advocate.

8.A perusal of the records reveals that the second appeals were returned by this Court on 25.09.2003. In the year 2004 itself, the Chennai Advocate has addressed the local Court Advocate that he has not received the fees and intimated the second appeals S.R. number.

9.On the side of the petitioner, it is stated that the petitioner has approached his counsel several times. No such proof was filed by the petitioner. The petitioner has addressed the Chennai counsel on 16.03.2012 and the Chennai counsel has replied the petitioner on 27.03.2012. The letter of the Chennai counsel clearly reveals that the petitioner has not approached the Chennai counsel even after the lapse of 8 years.

10.In this petition, it is stated that the petitioner has filed the copy application in the year 2012. But these petitions were filed only in the year 2016. The delay in filing these petitions is not explained by the petitioner. Each day delay is to be explained. The petitioner has not taken any steps against the lower Court counsel. The petitioner has not stated how he obtained the letter addressed to the local counsel. The letter clearly reveals that the petitioner is not interested in the case and he has not paid the fees. The letter sent by the Chennai counsel to the petitioner clearly reveals that the petitioner has not approached the Chennai counsel for 8 years. The delay of 4746 days is not explained by the petitioner. Hence, these petitions are dismissed and S.A. (MD) Nos. SR6223 and SR6227 of 2016 are rejected. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-I)

To

- 1.The Subordinate Judge, Padmanabhapuram.
- 2.The Principal District Munsif, Padmanabhapuram.

+2cc to Mr., Advocate Sr.No. 96996 & 96997

C.M.P. (MD) Nos. 6238 and 6239 of 2018

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26.11.2018