

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****RESERVED ON : 04.07.2019****PRONOUNCED ON : 09.07.2019****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****C.M.P. No. 1679 of 2019****in****S.A. SR. No.122401 of 2018**

The Commissioner,  
Coimbatore City Municipal Corporation,  
B.B. Street,  
Coimbatore – 641 001.

... Petitioner

Vs.

The Coimbatore District Consumer  
Co-operative Wholesale Stores Limited  
Registered Society under Tamil Nadu  
Co-operative Societies Act  
Represented by the Deputy Registrar/  
Special Officer, Mr.R.Periasamy,  
P.B. No.1098, R.S.Puram,  
Coimbatore – 641 002.

... Respondent

**Prayer in C.M.P. No. 1679 of 2019:** Civil Miscellaneous Petition filed under Order 41 Rule III A r/w Rule 1 of C.P.C. to condone the delay of 847 days in the filing the Second Appeal.

For Petitioner : Mr. K.Magesh

For Respondent : Mr. R.Bharath Kumar

\*\*\*\*\*

**ORDER**

The petition has been laid to condone the delay of 847 days in preferring the second appeal.

2. The suit has been laid by the respondent/plaintiff for permanent injunction against the petitioner. After contest, it is found that the abovesaid suit has been dismissed by the trial Court. The matter was taken on appeal by the respondent/plaintiff in A.S.No.101 of 2013 and it seen that the first appellate Court was pleased to set-aside the judgment and decree of trial Court and granted the relief in favour of the plaintiff as prayed for on 11.03.2016. Impugning the same, the petitioner/appellant has come forward with the second appeal, however, as there occurred a delay of 847 days in preferring the appeal, to condone the delay, the abovesaid petition has been laid.

3. As could be seen from the averments contained in the petition, it is not the case of the petitioner/appellant that he is not aware of the judgment and decree of the first appellate Court, dated 11.03.2016. It is thus seen that the petitioner/defendant is aware of

the judgment and decree of the first appellate Court on 11.03.2016 itself and also aware of the fact that the case had went against him. Despite the same, it is found that the petitioner/appellant had not preferred the appeal in time. For the delay occurred, with reference to the same, according to the petitioner, during the review meeting in April 2018, the concerned suit clerk had contacted the counsel who had appeared in the first appellate Court and came to know that the counsel had failed to file the copy application in time for obtaining the certified copy of the judgment and decree of the first appellate Court and as the judgment and decree of the first appellate Court needs reversal, it is stated that the petitioner/appellant had been necessitated to prefer the appeal and hence, the delay had occurred.

4. The abovesaid cause projected by the petitioner/appellant is being seriously challenged by the respondent. According to the respondent, the abovesaid cause has been falsely projected only to earn the sympathy of the Court and further put forth that the administrative delay and the failure of the petitioner and its counsel in filing the copy application of the judgment and decree of the first appellate Court etc., cannot at all be construed as sufficient cause for the delay and accordingly, it is contended that only with a view to drag on the proceedings endlessly and harass the respondent/plaintiff, the present petition has been laid.

5. As abovenoted, the disposal of the appeal by the first appellate Court is only to the knowledge of the petitioner/appellant. If really the petitioner/appellant has a good case to challenge the same, necessary instructions would have been given to prefer the appeal, as per law, within the time prescribed. On the other hand, though the first appeal is found to have disposed of on 11.03.2016, thereafter, for more than two years, no steps had been taken whatsoever by the petitioner/appellant to prefer the appeal challenging the judgment and decree of the first appellate Court. Very coolly, it is now stated that only during the review meeting, at the endeavour of the concerned suit clerk, it has come to their knowledge that they had failed to file the copy application in time and as they have a good case in the matter, they had chosen to file the appeal and accordingly had come forward with a petition to condone the delay. As to why prior to April 2018 no steps had been taken to prefer the appeal on the part of the petitioner/appellant despite having knowledge of the disposal of the first appeal, there is no proper explanation on the part of the petitioner/appellant. Therefore, the petitioner/appellant cannot put forth lame excuses as if there has been administrative delay in getting the opinion from the lower court counsel as regards the preferring of second appeal etc., and if really, the petitioner/appellant had a sound case to agitate in the appellate forum, as rightly contended by the

respondent's counsel, every endeavour would have been made by the petitioner to ensure that the appeal has been preferred in time.

6. Further more, it is seen that the petitioner had obtained the copy of the judgment and decree on 26.06.2018. Even thereafter, they had not come forward with the appeal in time immediately. On the other hand, the appeal is found to have been levied only on 29.01.2019 and in toto, it is found that absolutely there is lack of vigilance and interest on the part of the petitioner/appellant in preferring the appeal and the conduct displayed by the petitioner/appellant would only show that he is of the opinion that the appeal can be preferred at any time as he desires and the Court would entertain his request whatever the reason projected. However, when the delay in preferring the appeal would be condoned only on the sufficient cause put forth and when as above discussed, the petitioner has not projected any sufficient cause and even the petitioner has failed to substantiate the alleged case put forth by him with acceptable and reliable materials even prima facie, in such view of the matter, I am not inclined to accept the petition for the condonation of the delay.

7. The respondent's counsel in support of his contentions placed reliance upon the decision reported in **(2012) 5 SCC 157 (Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai)**. The

principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

8.In conclusion, the petition is dismissed with costs.  
Consequently, S.A.SR.No.122401 of 2018 is rejected.

**09.07.2019**

Index : Yes/No  
Internet:Yes/No  
sli

To

1. The Coimbatore District Consumer  
Co-operative Wholesale Stores Limited  
Registered Society under Tamil Nadu  
Co-operative Societies Act  
Represented by the Deputy Registrar/  
Special Officer, Mr.R.Periasamy,  
P.B. No.1098, R.S.Puram,  
Coimbatore – 641 002.

2. The Section Officer,  
V.R.Section,  
High Court, Madras.

WEB COPY

**T.RAVINDRAN,J.**

sli



**Pre-delivery Order in**

**C.M.P. No. 1679 of 2019**  
**in**  
**S.A. SR. No.122401 of 2018**

WEB COPY

**09.07.2019**