

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.13330 of 2016

in

A.S.SR.No.52786 of 2016

S.Chandra Babu

...Petitioner/Appellant

Vs..

S.Dillibabu

...Respondent/Respondent

Miscellaneous Petition filed under Order 41 Rule 3-A of CPC r/w Section 5 of Limitation Act to condone the delay of 2084 days in filing the Appeal against the judgment and decree dated 30.07.2010 passed in O.S.No.500 of 2004 on the file of the learned Principal District Judge, Chengalpet.

For Petitioner : Mr.S.Sadasharam

For Respondent : Not ready in notice

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 2084 days in filing the First Appeal against the judgment and the decree dated 30.07.2010 passed in O.S.No.500 of 2004.

2.The petitioner states that the suit was filed for partition and permanent injunction. The preliminary decree was passed on 30.07.2010 and there was a delay in filing an application for final decree. However, an application for final decree was filed and the said application was contested by the petitioner. The appointment of Advocate Commissioner was sought for and accordingly appointed by the Court through its order dated 17.11.2015, wherein the sale deed dated 10.11.1982 is found invalid and illegal. The petitioner narrates entire facts and circumstances as well as the merits regarding the judgment and decree. However, no grounds have been furnished for condoning the huge delay of 2084 days. Not even a single reason has been stated and in paragraph 11 alone, it is stated that because of the pendency of the Second Appeal in S.A.No.1053 of

2005, the petitioner did not take any steps to file appeal against the judgment and decree in O.S.No.500 of 2004. Except the said reasons, there is no averment in the affidavit with reference to the delay in filing the First Appeal against the judgment and decree passed in O.S.No.500 of 2004.

3.In the absence of any such acceptable reasons, this Court could not condone such a huge delay of 2084 days in filing the said appeal. Any such huge delay is to be condoned, if the parties are able to establish that they could not be able to approach the Court on account of certain genuine reasons. In the absence of any such genuine reasons, which is to be established before the Court of Law, huge delay of 2084 days cannot be condoned at all. Unconardonable delay cannot be condoned on certain flimsy grounds. Huge delay in normal circumstances are condonable, if the delay is meager, then it can be construed as condonable delay.

4.An application for final decree was filed and the Advocate Commissioner was appointed. Under these circumstances, huge delay of 2084 days cannot be condoned in the absence of any acceptable reasons, the petitioner filed the First Appeal merely by stating that Second Appeal is of the year 2005 and is pending and therefore, he did not take steps to file an Appeal. Such reason is absurd and cannot be accepted for the purpose of condoning the enormous delay of 2084 days.

5.These being the facts and circumstances, the petitioner has not given any acceptable reason for the purpose of condoning the delay and accordingly the petition is devoid of merits and stands dismissed. No costs. Accordingly, the A.S is rejected at the SR stage itself.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

Mrm

To

The Principal District Judge,  
Chengalpet.

C.M.P.No.13330 of 2016  
in  
A.S.SR.No.52786 of 2016

SSD(CO)  
GN(28/01/2020)