

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :28.08.2019

PRONOUNCED ON: 03.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

C.M.P.No.13925 of 2019
in
S.A.S.R.No.27293 of 2019

1. Elumalai

2. Ramakrishnan Petitioners/ Appellants

Vs.

Ramalingam Respondent

Prayer: Petition filed under Order 41 Rule 3(a) r/w 42 of C.P.C to condone the delay of 1198 days in filing the above second appeal as against the judgment and decree passed in A.S.No.88 of 1996 dated 09.04.2015 on the file of the Sub Court, Panruti, reversing the judgment in O.S.No.86 of 1992 on the file of the District Munsif Court, Panruti.

For Petitioners : Mr.R.Muralidharan

For Respondent : Mr.D.Ravichandran

ORDER

The petition has been filed to condone the delay of 1198 days in filing the second appeal.

2. The petitioners/appellants preferred the suit in O.S.No.86 of 1992 on the file of the District Munsif Court, Panruti, for the reliefs of declaration, recovery of possession, mandatory injunction, mense profits and damages. The abovesaid suit was contested by the respondent/defendant. The abovesaid suit was decreed by the trial court. The sole respondent impugned the same by preferring the first appeal in A.S.No.88 of 1996 on the file of the Subordinate Court, Panruti. The petitioners had also preferred the cross objection. The first appellate court had allowed the appeal preferred by the respondent and dismissed the cross objection by the petitioners. The petitioners preferred the S.A.No.151 of 2001, challenging the same. This Court had remanded back the matter to the first appellate court. The first appellate court again on an appreciation of the materials placed on record and the submissions made was pleased to allow the appeal preferred by the respondent

and dismissed the cross objection preferred by the petitioners. Impugning the same, the present second appeal has been preferred. However as there occurred the delay of 1198 days in preferring the appeal, to condone the said delay, the present petition has been laid.

3. The only reason given by the petitioners for the condonation of the delay is that their advocate clerk had mixed up the judgment and decree passed in the lower court with other old disposed of bundles in their advocate office and only much later, they were able to secure the same and thereby the delay had occurred. The abvoesaid cause given by the petitioners for the condonation of the delay has been stoutly repudiated by the respondent contending that the abvoesaid cause is false and invented by the petitioners for the purpose of the petition and only with a view to cause loss and hardship to the respondent, it is stated that the present petition has been filed and therefore prayed for the dismissal of the petition.

4. As could be seen from the affidavit appended with the petition, the impugned judgment was passed on 09.04.2015. Even as per the case of the petitioners they had filed the copy application only on 02.07.2015. It is thus found that the petitioners

had not filed the copy application for the impugned judgment immediately after the pronouncement of the same. They had taken their own time in filing the copy application. Now according to the petitioners they had obtained the delivery of the copy of the impugned judgment on 03.11.2015. If really they had the bonafide intention in preferring the appeal, they should have immediately endeavored to proceed further in the right course and ensured that the appeal is filed in time. On the other hand, it is found that there has been a delay of nearly four years in filing the second appeal. The cause adduced by the petitioners is that the judgment copy got mixed up with other bundles in the advocate office and only after they had secured the same, they could prefer the appeal. However, with reference to the abovesaid cause, absolutely there is no acceptable and convincing material placed on the part of the petitioners, particularly when the abovesaid cause is being stoutly challenged by the respondent and the respondent has put forth that the abovesaid cause was invented by the petitioners for the purpose of the petition. As rightly put forth, the petitioners should have placed convincing material to sustain the alleged cause projected by them for the condonation of the huge and inordinate delay and on the other hand, other than the bare affidavit appended to the petition, there is no material placed on record to

substantiate the alleged cause putforth by them for the condonation of the delay. In such view of the matter, the alleged cause projected by the petitioners for the huge and inordinate delay cannot be accepted.

5. As rightly contended by the respondent's counsel only on sufficient cause and bonafide reasons, the delay could be condoned. Insofar as this case is concerned, considering the cause projected by the petitioners for the delay, the same having not been established by the petitioners even *prima facie* and when the petitioners had not evinced interest to prosecute the appeal in time and had been taking their own time in preferring the same and in such view of the matter, as putforth by the respondent's counsel only with a view to cause loss and hardship to the respondent, it is found that the petitioners have come forward with the petition seeking for the condonation of the huge an inordinate delay.

6. In the light of the abovesaid factors, I hold that no sufficient cause has been projected by the petitioners for the condonation of delay. In such view of the matter, I am unable to accede to the cause projected by the petitioners for the delay.

7. In conclusion, the petition is found to be devoid of merits and accordingly the same is dismissed with costs. Consequently, S.A.S.R.No.27293 of 2019 is rejected.

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Index:yes
Internet:yes



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T.RAVINDRAN, J.

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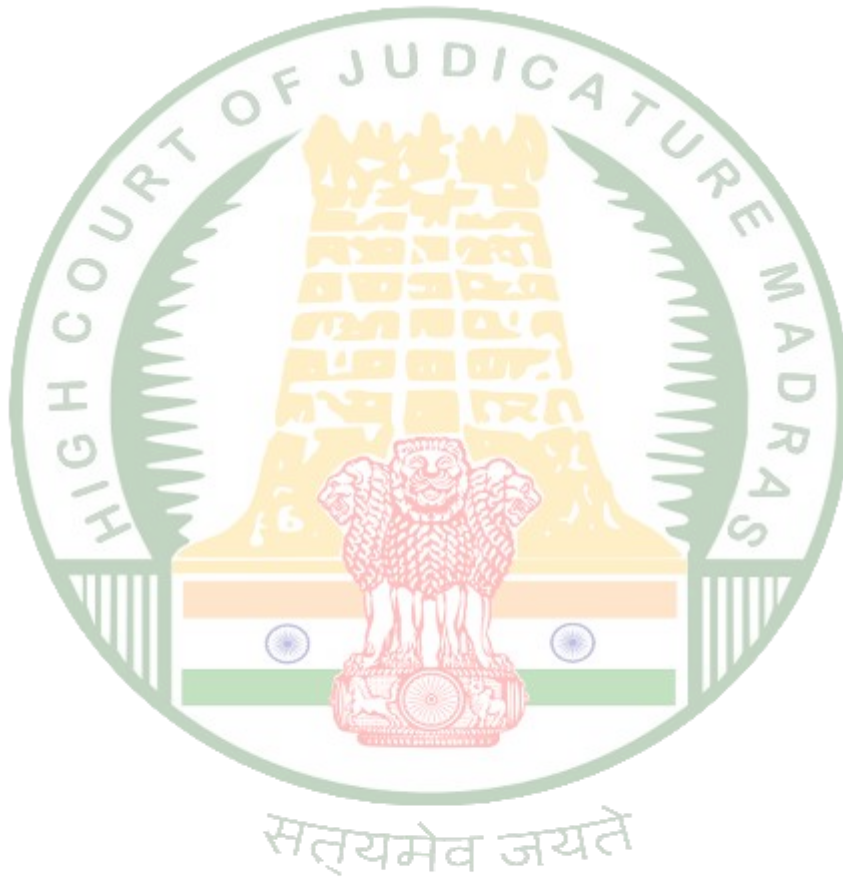
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