

C.M.P.No.13357 of 2019
in
A.S.S.R.No.35757 of 2019

S.M.SUBRAMANIAM, J.

The present Civil Miscellaneous Petition is filed to condone the delay of 1,628 days in filing the First Appeal against the judgment and decree dated 26.06.2014 passed in O.S.No.260 of 2008.

2.The learned counsel appearing on behalf of the petitioner made a submission that the entire delay occurred on account of the wrong doings of the learned counsel with whom the case bundle was entrusted by the petitioner. The entire facts and circumstances narrated in the affidavit filed in support of the Civil Miscellaneous Petition reveals that the Copy Application was filed in time and the papers were also handed over to the learned counsel Mr.Lakshmanasamy, who in-turn had failed to take appropriate action in filing the First Appeal and processing the same.

3.The facts and circumstances narrated in paragraph Nos. 5, 6, 7, 8 & 9 of the affidavit reveals that the petitioner was diligent in initiating action to prefer an appeal, however on account of the

misdeeds committed by the learned Advocate, the delay has occurred and therefore he may not be penalized for such activities of the counsel.

4.This Court is of an opinion that on account of the certain lapses and misdeeds committed by the Advocate, the litigant should not be made suffer, unless it is established that the litigant is also a part of such misdeeds. In the absence of any such proofs the litigant should not suffer for the wrong doings of the Advocate. In the present case, entire sequences narrated in the affidavit shows that there was non-filing by the advocate which resulted in delay of filing First Appeal in proper manner. The said paragraph Nos. 5, 6, 7, 8 & 9 are extracted to understand the sequences.

"5.I submit that judgment in O.S.No.260 of 2008 was pronounced on 26.06.2014 immediately after the judgment copy application was filed on 30.06.2014 in C.A.No.1051 of 2014, stamps called for on 04.09.2014 stamps deposited on 22.09.2014, copy made ready on 08.10.2014 and delivered on 09.10.2014. I submit that immediately after the receipt of the order copy it was

handed over to Mr.Lakshmanasamy, Advocate, who belongs to my native and acquainted with me for my other case, for filing appeal before this Court, and on subsequent follow up it was informed that the appeal has already been filed and the case is pending for hearing and it will be taken up for hearing at appropriate time. I submit that I have been periodically calling my counsel about the case status, whenever I called, I was informed that the case will be taken up for hearing as per seniority, hence I was under the bonafide belief that the appeal is pending before this Court but case number was never informed to me. I submit that on subsequent communications since there was no satisfactory reply I asked to handover the bundle during the last week of December 2018.

6. I submit that though I have been trying to get back the bundle to engage other lawyers to prosecute the case from December 2018, it was handed over on 1st March 2019 only. I submit that I have also instructed my present counsel to apply for certified copy of the judgment and decree in C.A.No.1298 of 2019. I submit that I got back the bundles bearing A.S.Sr.No.111957 of 2014 along with the return sheet bearing Sr.11957 of 2014 papers were returned to me. I submit that the return sheet showed that the above numbered case is returned on

07.01.2015 and return number has been assigned on 09.01.2015 as 59 I believed that these are the filed papers and this is the case number. I submit that it was handed over to my present counsel and then and then only I came to know that the appeal is only serial number stage and it has not yet been numbered case has been presented and returned and thereafter it was not represented.

7.I submit that on careful perusal of the return papers I was informed by the present counsel that no seal has been affixed either in the judgment or decree and seal is affixed only in the docket sheet containing Mr.Lakshmanasamy Advocate Name and unless until seal is affixed in judgment and decree along with grounds of appeal, the limitation will not be taken into account. I submit that in order to verify the same I instructed my present counsel to verify and advise the proper course of action. I submit that in order to represent the same my present counsel has verified the Sr.111957 of 2014 in filing section of the High court Registry, the Sr.No.111957 of 2014 given by my previous counsel has not been reflected in the A.S.sr. category and has come to know that, the Sr.Number 111957 of 2014 is belonging to CMSA Sr. category filed by Mr.Lakshmanasamy, Advocate on 23.12.2014 but he has not filed my case.

8.I submit that thereafter I have been trying to get explanation from my previous counsel Mr.S.Lakshmanasamy, Advocate about the change of category and my actual number of the case but could not receive any proper reply, finally on 08.03.2019 I received a phone text message from my previous counsel Mr.Lakshmanasamy that this is your case number registry has wrongly entered and you don't waste time proceed further. I submit that I was also informed that you have got back the bundle and otherwise he would have proceeded further. I submit that though the dockets of judgment and decree is sealed on 23.12.2014 no seal has been affixed on the judgment and the decree. I submit that in the docket also District has been overlapped with whitener but it bluntly appears as Tiruppur and case category has been written in pen as A.S. and in which also CMSA has been overlapped with whitener, the counsel name is appearing as M/s.S.Lakshmanasamy (568/2001) and other name 53, Law Chamber, High Court Building, Chennai – 04, Counsel for the appellant.9443498977.

9.I submit that depressed and suffered a lot over the above narrated facts I left with no other option filing this present appeal with the C.A.No.1298 of 2019 which was applied on 26.02.2019 and was made ready on

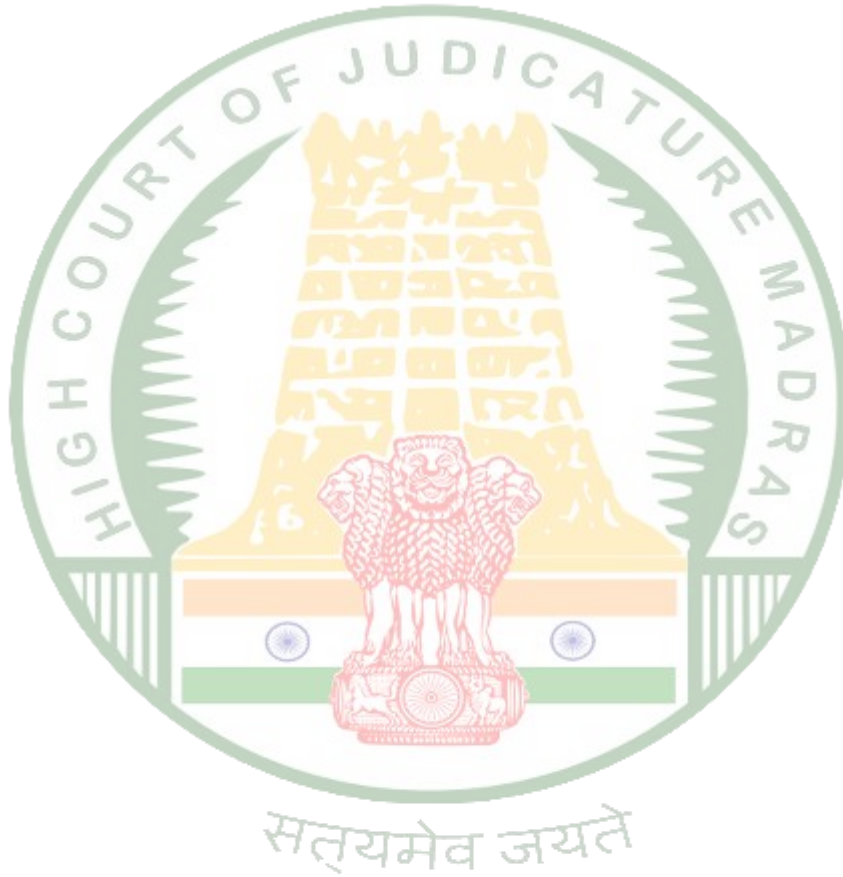
01.03.2019. I submit that I am filing this present appeal with the recently obtained judgment and decree copy in C.A.No.1298 of 2019 and the earlier C.A.No.1051 of 2014 is very well available with me along with the returned papers in support of my contentions. I submit that due to the above reasons only the appeal could not be presented in time. I submit that delay in filing appeal papers in time is neither wanton nor willful but due to the above reasons stated only. I submit that, petitioner has not gained anything because of the delay and infact the petitioner has lost her valuable right due to the above act and the respondents will no way prejudiced in the event of condoning the delay due to the extraordinary mentioned above in filing the present appeal before this Hon'ble Court."

5.The learned counsel appearing on behalf of the second respondent had no serious objections. In respect of other respondents, notice was served on the other respondents and none appeared on their behalf. Under these circumstances, this Court is inclined to consider the petition to condone the delay. Accordingly, the delay of 1,628 days in filing the First Appeal is condoned on condition to pay Rs.3,000/- to the High Court Legal Services Authority on or before 10.12.2019 failing which the petition shall stands automatically

dismissed. In the result, the Civil Miscellaneous Petition stands allowed and Registry is directed to number the First Appeal, if it is otherwise in order, and on payment of cost.

04.12.2019

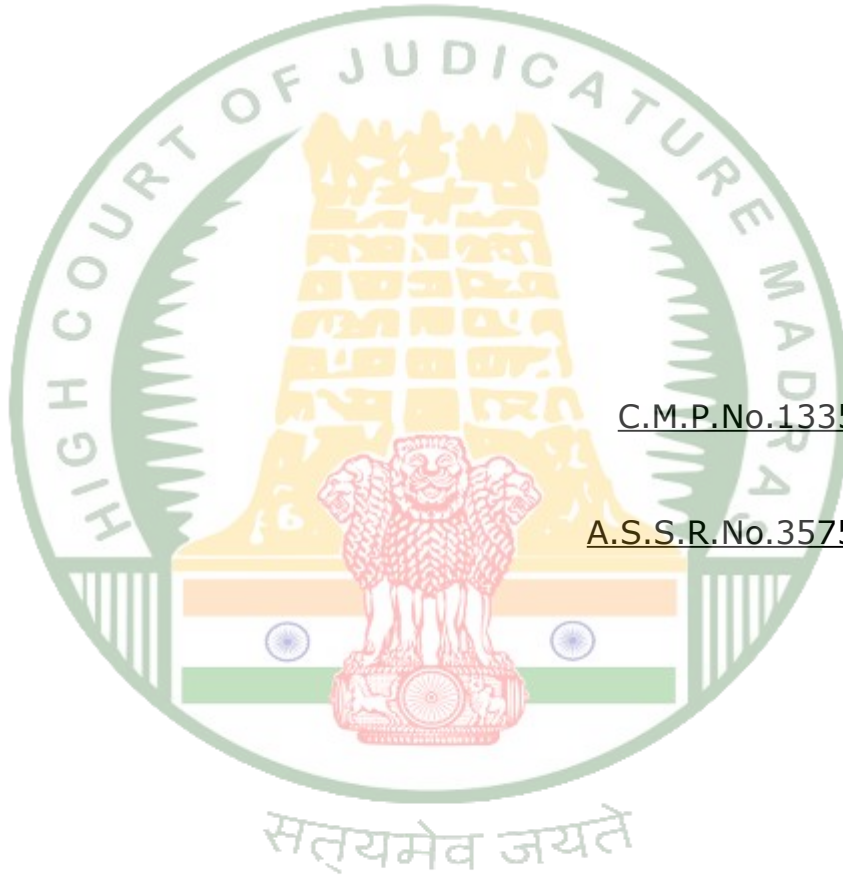
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