



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.P.No. 19802 of 2019
in
S.A.SR.No. 104495 of 2019

Rajendran

..Appellant

Vs.

1.Ranjitham
2.Nagagounder
3.Kalaivani

..Respondents

Prayer in the petition: Petition filed under Order XLI Rule 3A of Code of Civil Procedure for condonation of delay of 2008 days in filing the second appeal Second Appeal SR.Stage preferred against the decree and Judgment in AS.No. 117 of 2008 dated 20.07.2011 on the file of the II Additional Subordinate Judge, Salem confirming the decree and Judgment of the Principal District Munsif, Salem in OS.No. 625 of 2005 dated 03.10.2007.

For Appellant : Mr.Neelakandan

For Respondents : Mr.P.Jagadeesan

J U D G M E N T

This application has been filed seeking to condone the delay of 2808 in filing the appeal. The only reason that is assigned in the affidavit filed in support of the petition is that there was an attempted compromise and therefore, the appellant did not file an appeal. The respondent has filed a counter contending that the claim of compromise is false. It is also stated that the final decree proceedings were being prosecuted with all seriousness through out the period of delay. The final decree petition came to be dismissed on 15.11.2017 and an application in I.A.No. 549 of 2018 was filed almost immediately on 15.12.2017 seeking restoration and the final decree application came to be restored on 15.11.2018.

2. The learned counsel appearing for the respondents has produced the extract of the orders passed in I.A.No. 174 of 2008 namely, the final decree application in I.A.No. 549 of 2018 namely, the application for restoration of the final decree that



was dismissed for default.

3. A perusal of the same shows that the first respondent herein has been prosecuting the final decree application with all seriousness through out the period of delay. Even assuming that there was a compromise prior to the dismissal of the application in I.A.No. 174 of 2008. The fact that the restoration application was filed should have put the petitioner on notice that there was no intention to settle on the side of the respondent. In fact, the petitioners' counsel had entered appearance in the application for restoration as early as on 20.06.2018. The appeal itself came to be filed only on 13.08.2019 in this Court. The delay between 20.06.2018 and 13.08.2019 has not been explained at all. I therefore, find that the petitioner has not made out a sufficient cause for condonation of lengthy delay of 2808 days. Hence, this application is dismissed and the S.A.SR.No.104495 of 2019 will stand rejected.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Kkn

TO

1.The II Additional Subordinate Judge,
Salem.

2.The Principal District Munsif,
Salem.

+1cc to Mr.K.Ramesh, Advocate, S.R.No. 98645

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No. 98106

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RSK(CO)
GN(09/01/2020)