

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2019

Coram

The Honourable Ms. Justice P.T.ASHA

C.M.P.No.5014 of 2017
in
SA.No.SR18077 of 2017

Saraswathi

...

Petitioner/Appellant
in CMP and SASR

Versus

1. Kaliamoorthy

2. Sudarvili

...

Respondents/Respondents
in CMP and SASR

PRAYER in CMP.No.5014 of 2017: This Petition is filed under Order 41 Rule 3A R/w. U/O 42 Rule 1 of Civil Procedure Code to condone the delay of 51 days in filing the second appeal against the Judgment and Decree dated 24.09.2012 made in AS.No.17 of 2011 on the file of Principal Sub Court, Mayiladuthurai reversing the Judgment and Decree dated 06.12.2010 made in O.S.No.358 of 2007 on the file of Principal District Munsif Court, Mayiladuthurai.

PRAYER in SA.SR18077 of 2017 : This Petition is filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree dated 24.09.2012 made in A.S.No.17 of 2011 on the file of Principal Sub Court, Mayiladuthurai in so far as against the Appellant, by

reversing the Judgment and Decree dated 06.12.2010 made in O.S.No.358 of 2007 on the file of Principal District Munsif Court, Mayiladuthurai.

For Petitioner : M/s. P.Saravana Sowmiyan

For Respondents : M/s. P. Srividhya

JUDGMENT

The above application is filed for condoning the delay of 1491 days in filing the second appeal. The plaintiff in the suit O.S.No.358 of 2007 on the file of the learned Principal District Munsif, Mayiladuthurai, whose suit was dismissed and the 1st appeal partly allowed in A.S.No.17 of 2011 on the file of the Principal Sub Court, Mayiladuthurai, is the appellant before this court. The suit was filed for a mandatory injunction to restore the 2 ½ feet sloping roof which had been demolished by the defendants and also to direct the defendant to remove the sun shed which they have put up close to the plaintiffs slopping roof.

2. The plaintiff/appellant has contended in the petition that originally the appellant had filed the petition to condone the delay of 51 days and thereafter it was pointed out by the learned counsel for the respondent that there is a delay of 1491 days and not 51 days as stated in the affidavit. Therefore, a fresh affidavit has been filed by

the appellants, seeking leave to condone the delay of 1491 days in filing the second appeal. The only reason that has been given for the delay is that the appellant /petitioner is suffering from Cancer. The petitioner has also filed a Xerox copy of the medical records pertaining to the petitioner.

3.The respondents have countered the said petition by stating that in the guise of getting the delay condoned the appellant was trying to give life to the relief of mandatory injunction which had expired long back and the disallowed portion of the Trial Court is sought to be reversed in appeal. The Trial court judgment has been passed as early as on 24.09.2011 and given the fact that this appeal is filed after over 4 years, the delay cannot be permitted to be condoned as it would cause grave prejudice to the respondent.

4. Heard Mr. P. Saravana Sowmiyan, learned counsel for the appellant and M/s. P. Srividhya, learned counsel for the respondents 1 and 2.

5. The petitioner has come forward with the case that she was suffering from cancer and therefore, unable to contact her counsel to file necessary applications to condone the delay. The documents that

have been filed on the side of the petitioner would show that even as early as in the year 2006, the petitioner has been suffering from the ailment and it is during the pendency of the treatment, the petitioner has filed the suit in O.S.No.358 of 2007 as well as A.S.No.17 of 2011. Therefore, the reasons given in the affidavit filed in support of the condone delay petition is absolutely false. The petitioner having kept quiet for over 1491 days in filing the present Second Appeal, cannot now try to upset the right that has accrued to the petitioner. Further, the petitioner has not give sufficient reasons for condoning the delay and the reasons that has been given is also false.

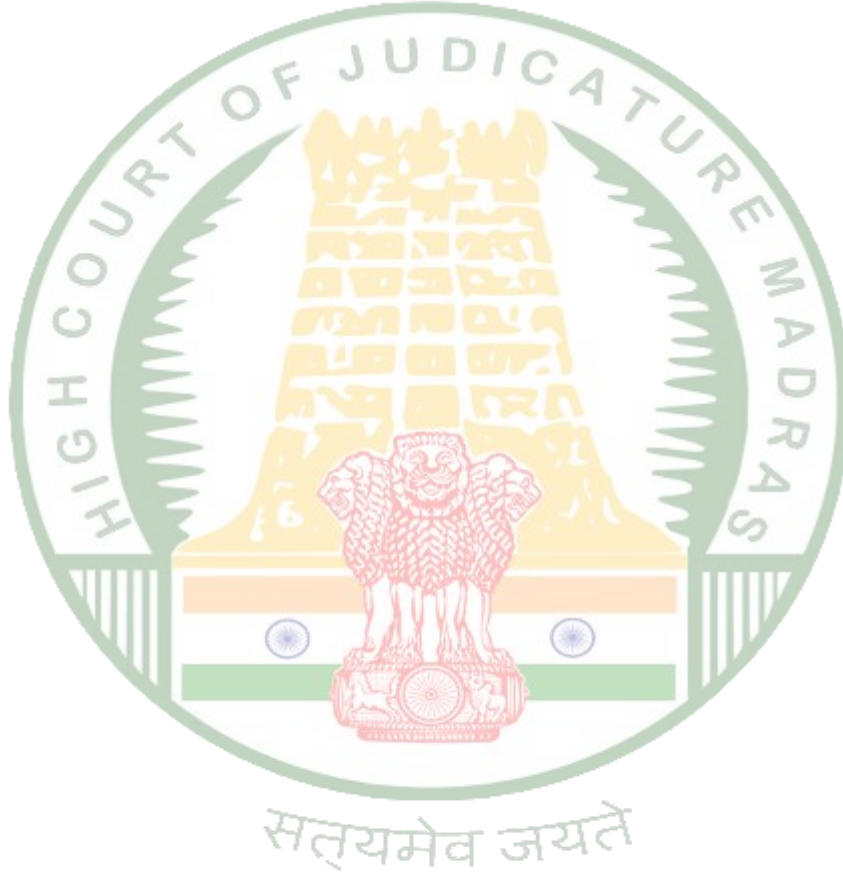
6. In these circumstances, I do not find any merits in condoning the delay of 1491 days in filing the Second Appeal. The present miscellaneous petition deserves dismissal and accordingly, **dismissed** and consequently, SA.No.SR18077 of 2017 is **rejected**.

25.01.2019

jrs
Index : Yes/No
Internet : Yes / No
Speaking/non-speaking order

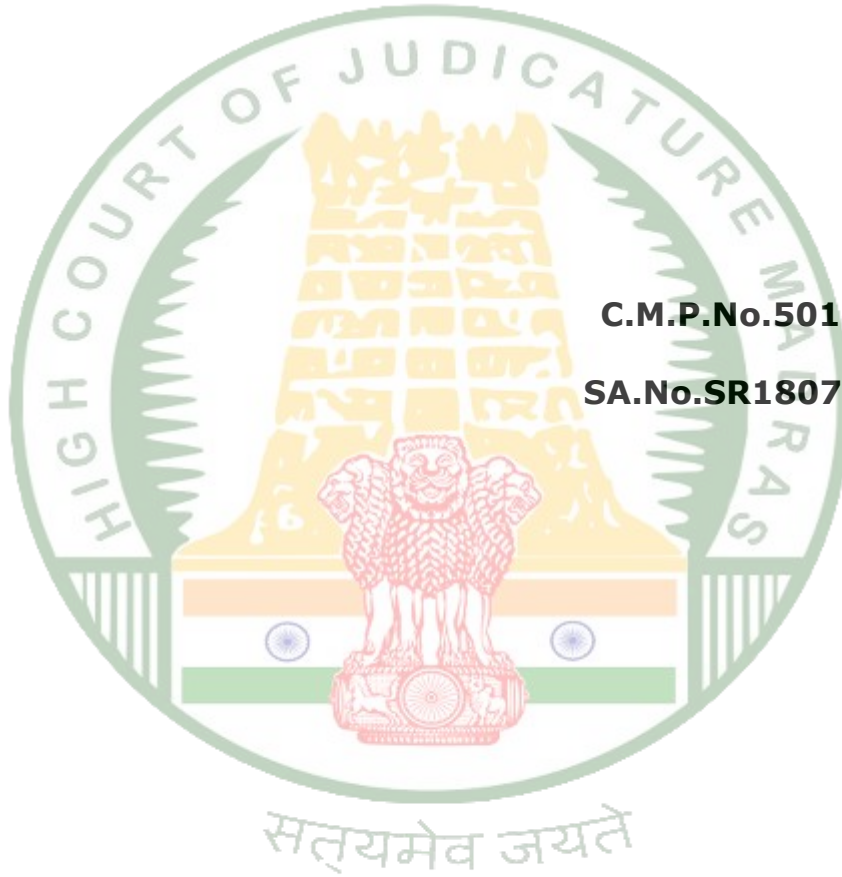
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To
The Principal District Munsif Court,
Mayiladuthurai.



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P.T.ASHA, J.
jrs



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SA.No.SR18077 of 2017**

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