

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.10025 of 2017

in

A.S.SR.No.27139 of 2017

Viswanathan

...Petitioner

Vs..

Bhavani Abisheka Kattalai

...Respondent

Civil Miscellaneous Petition filed under Order XLI Rule 3A of CPC, 1908 to condone the delay of 4692 days in preferring the appeal against the judgment and decree dated 10.06.2002 in O.S.No.5082 of 1999.

For Petitioner : Mr.N.Santhosh Nagarajan

For Respondent : A.K.Sriram
for M/s.A.S.Kailasam Associates

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 4692 days in preferring the appeal against the judgment and decree dated 10.06.2002 in O.S.No.5082 of 1999 on the file of the Additional District Judge, Fast Track Court – V, Chennai.

2.The petitioner states that the land belongs to the respondent/ temple namely Arulmigu Arunachaleswarar Temple, Thiruvannamalai. The suit was filed for declaration to declare that the petitioner is a trespasser and to quit and deliver the vacant possession of the land after removing the superstructure and claiming damages against the petitioner for use and occupation including future use till delivery of the possession. The petitioner states that he have put up construction in the above said land in the year 1998 and he was paying rent to the plaintiff and the market value is worth Rs.100 Lakhs as on the date of filing of the Miscellaneous petition.

3.It is admitted by the petitioner that the land belongs to the respondent/temple, but superstructure belongs to the petitioner. The suit was decreed in favour of the temple and now appeal is filed with a delay of 4692 days. The petitioner states in para 5 that the suit was decreed on 10.06.2002 in favour of the respondent/temple granting the relief and he was the senior citizen at that point of time. The petitioner states that he was suffering from paralysis disability and could not move out of bed without any assistance for several years. Therefore, there is a delay of 4692 days i.e., 12 years in preferring an appeal

before this Court. The very reasons stated in the affidavit is neither candid nor convincing. The statement is made blanketly without furnishing the details of treatments taken. Contrarily, a blanket statement has been made that he was suffering from paralysis disability. Such routine statement made by the litigant to condone the huge delay of 4692 days cannot be accepted by the High Court.

4.Any such delay which is unexplained to be construed as an uncondonable delay and cannot be condoned by the High Court in a routine manner. Reasonable delay which is explained can be condoned. In the present *lis* on hand, perusal of the affidavit shows that the reasons are stated in a mechanical manner and the same has not been substantiated with some proof or by elaborating sequences in a manner known. Therefore, the Courts must be cautious while condoning the huge delay.

5.In the present case, the delay is more than 12 years in filing the First Appeal and more specifically the petitioner himself admitted that the property belongs to the respondent/temple and the decree was passed by the Trial Court in favour of the respondent/temple.

S.M.SUBRAMANIAM.,J.

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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.

6.In view of the facts and circumstances, this Court has no hesitation in arriving at a conclusion that the petitioner has not assigned any acceptable reason for the purpose of condoning the delay of 4692 days (more than 12 years). Thus the Miscellaneous Petition is devoid of merits and stands dismissed and accordingly, the Appeal Suit stands rejected at the stage of SR.

04.12.2019

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Index : Yes
Internet:Yes
Speaking Order

To

Additional District Judge,
Fast Track Court – V, Chennai.

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