

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.P.No.4230 of 2017

in

S.A.No.SR17982 of 2017

Fathima Bi @ Zamruth January ...

Petitioner

Vs.

A.Abdul Munaf ...

Respondent

PRAYER in C.M.P.No.4230 of 2017: Civil Miscellaneous Petition is filed under Order 41 rule 3A R/W Order 42 Rule 1, Code of Civil Procedure for condoning the delay of 3330 days in filing the present second appeal.

PRAYER in S.A.No.SR17982 of 2017: The petition is filed under Section 100 of the Code of Civil Procedure, against Judgment and Decree of the learned Principal District Judge, Dharmapuri @ Krishnagiri dated 31.01.2007 made in A.S.No.14 of 2006 reversing the Judgment and Decree of the learned Subordinate Judge, Dharmapuri dated 23.02.2006 made in O.S.No.171 of 1998.

For Petitioner : Mr. S. Sarvanakumar

For Respondent : Mr. P. Valiappan

JUDGMENT

The defendant in a suit for specific performance is the appellant herein and the petition in question is filed for condoning the delay of 3330 days in filing the Appeal. The judgment and decree in A.S.No.14 of 2016 which is the subject matter of challenge in the above Second Appeal was passed as early as on 31.01.2017 and it is seen from the records that the instant S.A.No.SR17982 of 2017 has been filed on 28.02.2017. The reasons adduced for the delay are as follows:

(i) The lower Court counsel was instructed to obtain certified copies of the entire set in the July 2014 and the copies were obtained.

(ii) There was a connected case in A.S.No.14 of 2016 filed by one Raziya Begum. The certified copies were obtained in both the cases and after the copies were received the bundles were sent by the lower Court counsel to the appellant's counsel at Chennai.

(iii) However, by a oversight only the papers in A.S.No.15 of 2006 and not the papers relating to the instant Second Appeal.

(iv) The omission was observed much later when the Second Appeal in A.S.No.15 of 2006 was made (it is informed that the even this Appeal has been filed that the delay over 2000 days).

(v) The petitioner/appellant had tired contacting the lower Court counsel who had by then shifted and his whereabouts were not known to the appellant.

2. In November 2016, the counsel's address was finally traced and thereafter, he had to trace out the copies which were mixed up that other bundles. The matter was forwarded to the counsel at Chennai and as a consequence, the delay of 3310 days occurred. The delay was not wilful or wanton, but for the above reasons.

3. In response to the above Application, the respondent plaintiff had filed a very detailed counter, in which he would make the following submissions:

Allegations in the averments filed in support of the condonation delay petition is absolutely false; the petitioner is in the habit of prolonging the matter. The suit was filed in the year 1988, the written statement was filed only after four years. The suit was dismissed, against which originally an Appeal was filed and the matter was

remitted back to the trial Court and thereafter, once again the suit was dismissed and ultimately A.S.No.14 of 2006, which is the subject matter of challenge in the present Appeal, has been passed. The plaintiff/respondent herein had filed execution proceedings in E.P.No.17 of 2010 for executing sale deed in favour of the plaintiff. The petitioner had entered appearance in the said execution proceedings in the year 2010 itself. The petitioner/appellant has filed O.S.No.234 of 2010 against the respondent herein and others for a declaration and injunction in which the petitioner had contended that on 08.08.2010, the respondent herein had attempted to trespass into the property. Nowhere in the said suit the petitioner had made a mention about the suit O.S.No.171 of 1998 which is the subject matter of challenge in the present proceedings.

4. Heard Mr.Saravanakumar, learned counsel for the appellant and Mr.Valliappan, learned counsel for the appellant.

5. From a perusal of the affidavit and counter affidavit as also the certified copy of the papers in suit in O.S.No.234 of 2010. It is evident that the petitioner was deliberately delaying the proceedings. The petitioner who has been contesting the execution proceedings from the year 2010 has kept quiet till the year 2017 for filing the

appeal. There is no satisfactory answer that has been given on the side of the appellant for the delay and the reasons adduced by him in the affidavit filed in support of the condone delay are contrary to the documents filed on the side of the respondent, which clearly shows the petitioner/appellant has been prosecuting the execution proceedings before the executing Court and therefore, was very much aware that the Appeal filed by him has not been taken on file and the stay obtained the appellant ought to have been more vigilant and ensured that the Appeal was filed in time.

6. The Honourable Supreme Court has no doubt, stated that the Court should not take a pedantic approach while dealing with the condone delay petition. However, the word of caution has been added in that the Honourable Supreme Court had stated that it is for the Court to sift through the reasons and find out if the delay is deliberate and made for protracting the proceedings and in case, the petitioner is guilty of dilatory proceedings, the Court should loath to condone such dilatory tactics. In the instant case, after the decree was passed in the year 2007, the petitioner had not taken any steps and even after the execution petition was filed in the year 2010 i.e., three years after the Judgment and Decree in A.S.No.14 of 2006. The petitioner did not move a little finger to have the Second Appeal filed.

It is only in the year 2017, the petitioner has chosen to move this Court and the reasons given are not sufficient and satisfactory.

7. In the result, this Civil Miscellaneous Petition for condoning the delay of 3330 days in filing the Second Appeal stands dismissed.

07.01.2019

mrr

Index : Yes/No

Internet : Yes /No

Speaking /Non-speaking order

To

1.The Principal District Judge,
Dharmapuri @ Krishnagiri.

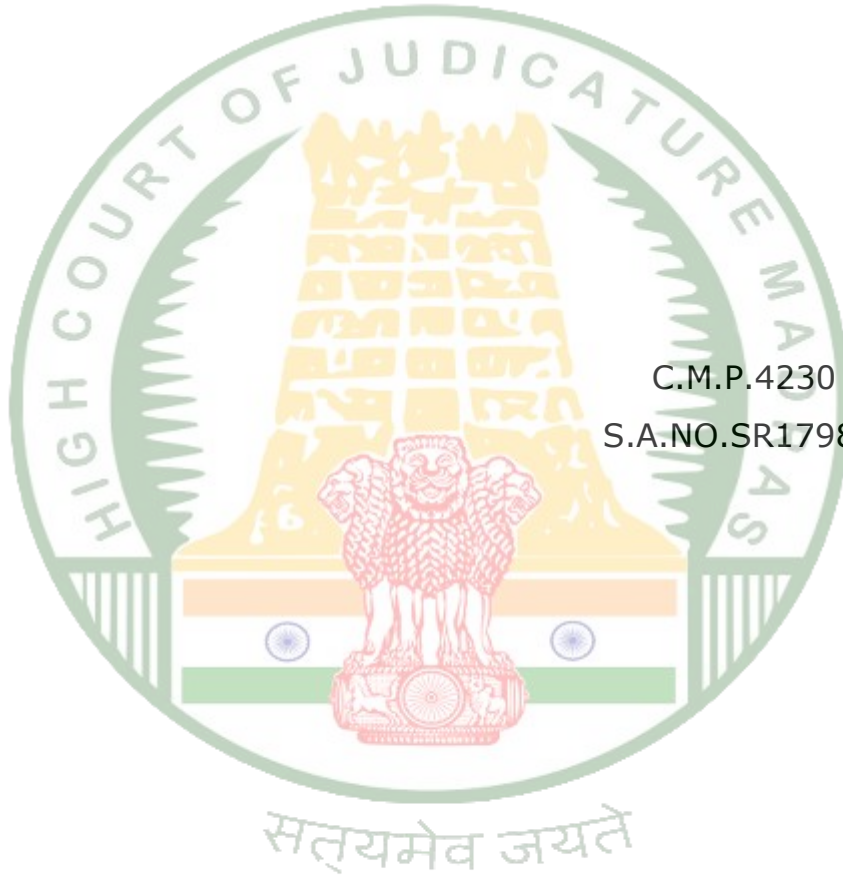
2.The Subordinate Judge,
Dharmapuri

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