

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28..02..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.P.No.23661 of 2018

and

S.A. SR No.141083 of 2018

C.M.P.No.23661 of 2018

- 1.The District Collector,
Villupuram.
- 2.The Tahsildar,
Vanoor.
- 3.The Village Administrative Officer,
Irumbai Village,
Vanoor Taluk.
- 4.The Commissioner,
Vanoor Union Block,
Vanur,
Vanoor Taluk (Thiruchitrambalam Koot Road)

... Petitioners

-versus-

- 1.Vanur Taluk Bhavani

- 2.Mayavathi

- 3.Saravanan

... Respondents

Civil Miscellaneous Petition filed under Order 41, Rule 3(A)
r/w Order 42, Rule 1 of CPC praying to condone the delay of
1252 days in filing the above second appeal.

S.A.SR No.141083 of 2018

1.The District Collector,
Villupuram.

2.The Tahsildar,
Vanoor.

3.The Village Administrative Officer,
Irumbai Village,
Vanoor Taluk.

4.The Commissioner,
Vanoor Union Block,
Vanur,
Vanoor Taluk (Thiruchitrambalam Koot Road)

... Appellants

-Versus-

1.Vanur Taluk Bhavani

2.Mayavathi

3.Saravanan

... Respondents

This unnumbered second appeal is filed against the judgement and decree dated 30.03.2015 made in A.S.No.49 of 2013 by the learned Principal Sub Judge, Tindivanam, reversing the judgement and decree dated 14.10.2011 made in O.S.No.76 of 2006 by the learned District Munsif cum Judicial Magistrate, Vanur, Villupuram District.

For Petitioners/Appellants

: Mr.A.Dev Narendran,

Government Advocate

For

Respondents/Respondents

: Ms.J.Prithivi

for

Mr.S.Kaithamalai Kumar

ORDER

This civil miscellaneous application has been filed seeking to condone the delay of 1252 days in filing the second appeal.

2. The respondent herein filed a suit in O.S.No.76 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Vanur, for a declaration declaring that the plaintiffs are the absolute owner of the suit property and for permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the suit property and for mandatory injunction directing the defendants 1 to 3 to cancel the patta mutated in the name of the 4th defendant and to issue patta in the name of the plaintiffs. The learned District Munsif, by judgement dated 14.10.2011, had decreed the suit as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S.No.49 of 2013 and the learned Additional District Judge, Tindivanam, by judgement and decree dated 11.12.2018, has dismissed the appeal suit. Further aggrieved by the same, the defendants 1 to 4 have filed second appeal (Unnumbered) before this court with a delay of 1252 days along with the instant application seeking to condone the delay in preferring the appeal.

3. The learned counsel for the appellant submitted that immediately after having obtained certified copies of the judgement and decree in the appeal suit on 20.03.2017, the defendants had taken appropriate steps to get administrative sanction from the Government for filing the second appeal and in that process there had occurred considerable delay.

4. Per contra, the learned counsel for the respondents submitted that there is a gross delay of 1252 days in preferring the appeal and the delay has not been properly explained by the appellant and mere administrative delay cannot be a reason for filing the appeal with a delay of 1252 days. The learned counsel for the petitioner in support of her contention placed reliance heavily upon a judgement of the Division Bench of High Court of Bombay in **The Additional Commissioner of Sales Tax v. Kayani Bakery, Pune, Manu/MH/1198/2016**.

5. I have heard the learned Government Advocate appearing for the petitioners and the learned counsel appearing for the respondents and also perused the available materials carefully.

6. The only ground for the delay in filing the second appeal is stated to be the delay in getting the administrative sanction.

Of course there is a gross delay of 1252 days in preferring the second appeal. As rightly pointed out by the learned counsel for the respondent, the Government, being the largest litigant, has to be a model and ideal litigant. No doubt, getting sanction for further appeal would take sufficient time, but, merely on that ground, such a gross delay of 1252 days cannot be condoned as a routine. The petitioners have not stated sufficient cause for the delay in filing the appeal. In the said circumstances, this court is not inclined to condone the delay and the miscellaneous petition deserves only to be dismissed.

7. In the result, this miscellaneous petition is dismissed. No costs. Consequently, SA SR No.141083 of 2018 is rejected.

Index : Yes / No 28..02..2019
 Internet : Yes / No
 Speaking / Non Speaking Order

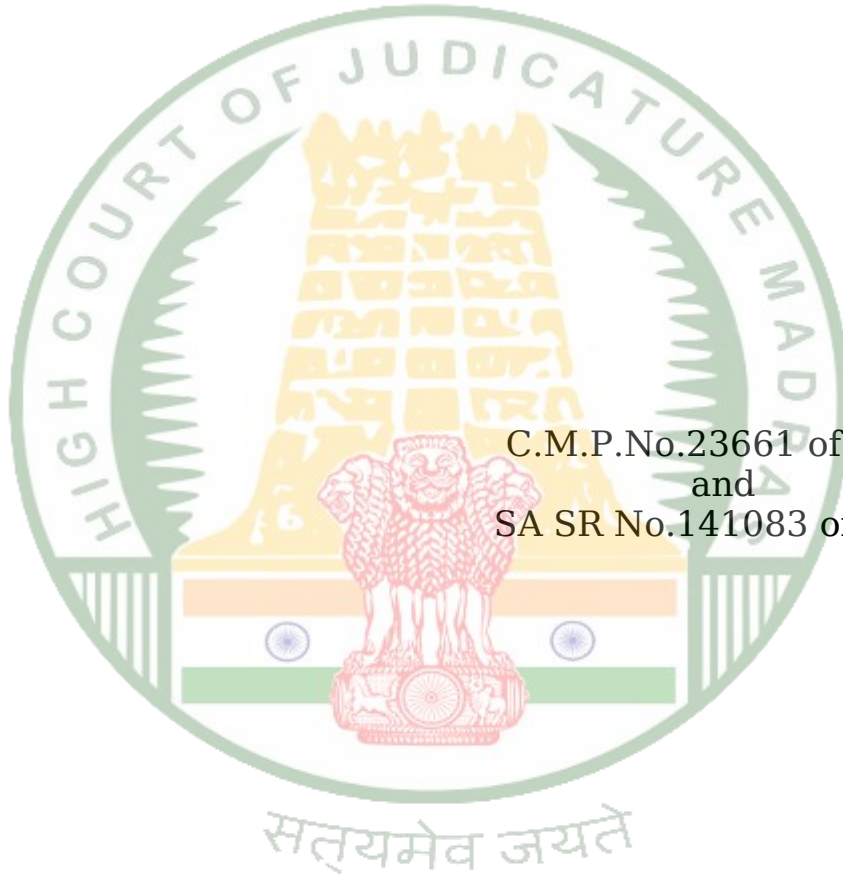
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To

- 1.The Principal Sub Judge, Tindivanam, Villupuram District.
- 2.The District Munsif cum Judicial Magistrate, Vanur, Villupuram District.

V.BHARATHIDASAN.J.,

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