



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Sixth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) No.1826 of 2019

IN

SA(MD) No.SR41979 of 2018

MUTHAMMAL,

... PETITIONER/APELLANT

Vs

1.R.GOPAL,

2 R.KUMARESAN,

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 8976 days in represent SA.SR.No.41979 of 2018 and render justice.

PRAYER IN SA(MD) No.SR41979 of 2018:-

To present this Memorandum of Grounds of Second Appeal into this Hon'ble Court against the judgment and decree dated 30.07.93 and made in A.S.No.145/92 on the file of Principal District Court, Madurai confirming the judgment and decree dated 26.08.1992 and made in O.S.No.394/1991 on the file of District Munsif, Madurai Taluk.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.BALASUBRAMANIAN & ASSO, Advocate for the petitioner, the court made the following order:-

This petition is to condone the delay of 8976 days in representing the appeal.

2.The present appeal has been filed against the concurrent findings of the Courts below. The appeal arises out of a dispute over the suit pathway which is the only access to the appellant which was prevented by the respondent claiming exclusive ownership.

3.Learned counsel for the petitioner/appellant has filed sworn affidavit stating that the trial Court and the appellate Court lost sight of the important aspect that the suit pathway is the only access to reach the house of the appellant and easementary rights was ignored by the Courts below. According to the learned counsel, the appellant entrusted the case to his father K.Viswanathan,



Advocate, Chennai.

4.Learned counsel for the appellant would further submit that though the appeal was presented in time before the Principal Seat of this Court, due to frequent return by the Registry for certain compliances, the papers could not be re-presented in time. In the meantime, a permanent Bench was constituted at Madurai in 2004. He further submits that originally, the case was handled at Chennai by his father K.Viswanathan who passed away on 07.03.2001 and thereafter, the learned counsel for the petitioner/appellant was appointed as Senior Central Government counsel for the Madras High Court in November 2002 which is continuing without any interruption till date and he is the senior-most panel counsel in the Madras High Court and therefore, he could not follow up this case. He also submits that because of the change in his office in 2002, the case bundle got mixed up with other bundles and therefore, he was not able to trace out the same.

5.Learned counsel for the petitioner would further submit that he underwent bye-pass surgery in 2012 and he is taking treatment till now. Now, the son of the appellant has initiated disciplinary proceedings in DCC.No.63/2018. Learned counsel would further submit that on 06.08.2018, his tenure as senior panel counsel was extended for a further period of three years.

6.Learned counsel for the appellant has filed the sworn affidavit seeking apology of this Court for not representing the papers in time because of the genuine reasons which had been narrated above and would pray to condone the same stating that the delay is neither wilful nor wanton.

7.Since the delay is very inordinate but occurred due to the mistake on the part of the counsel, for which, the party should not be made to suffer in any way, I feel that the delay can be condoned on terms.

8.Accordingly, the delay of 8976 days in representing the appeal shall stand condoned subject to payment of cost of Rs.20,000/- (Rupees Twenty Thousand only) to the Chief Justice Relief Fund, by the learned counsel for the petitioner, on or before 13.03.2019, failing which, this petition shall stand dismissed automatically without further reference to this Court.

sd/-
06/03/2019

/ TRUE COPY /



TO

1. THE PRINCIPAL DISTRICT JUDGE,
MADURAI

2. THE DISTRICT MUNSIF,
MADURAI.

COPY TO:

THE SECTION OFFICER,
ACCOUNTS SECTION,
(CHIEF JUSTICE RELIEF FUND),
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

BALA

+1. C.C. to MR.V.BALASUBRAMANIAN, Advocate SR.No.4326

ORDER

IN

CMP (MD) No.1826 of 2019

IN

SA (MD) No.SR41979 of 2018

Date :06/03/2019

AE/JC/SAR-II/11.03.2019/3P/5C