



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

Tuesday, the Fifth day of March Two Thousand Nineteen

PRESENT

**The Hon`ble Mrs.Justice J.NISHA BANU**

**CMP(MD) No.1959 of 2019**

**IN**

**SA(MD) No.SR26168 of 2011**

PETCHIAMMAL,

... PETITIONER/APELLANT

Vs

1.KRISHNAN,  
2 VELU,  
3 MADASAMY,  
4 KARUPPASAMY,

... 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 2804 days in representing the above Second Appeal in SA.SR.No.26168 of 2011.

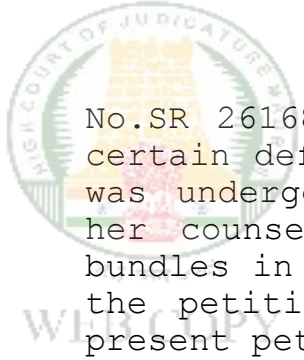
**PRAYER IN SA(MD) No.SR26168 of 2011:-**

To set aside the Judgment and Decree passed in A.S.No.17 of 2006 on the file of Subordinate Judge, Sankarankovil dated 18.11.2008 confirming the Judgment and Decree passed in O.S.No.247 of 1998 on the file of Additional District Munsif Court, Sankarankovil dated 16.03.2004.

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.M.P.SENTHIL, Advocate for the petitioner, the court made the following order:-

This petition has been filed by the petitioner seeking to condone the delay of 2804 days in representing the above Second Appeal.

2.It is stated in the petition that the petitioner/plaintiff filed O.S.No.247 of 1998 for the reliefs of permanent injunction and mandatory injunction in respect of the suit property and the Trial Court dismissed the suit. On appeal, the First Appellate Court has also dismissed the same, confirming the Judgment and decree passed by the Trial Court. Against the concurrent Judgments and decrees passed by the Courts below, the petitioner / plaintiff filed S.A(MD)



No.SR 26168 of 2018 and the same has been returned for rectifying certain defects. Since the petitioner, who is aged about 73 years, was undergoing treatment for varicose vein, she has not contacted her counsel. The returned papers also got mixed up with other bundles in the Advocate's office. Therefore, the delay mentioned in the petition has occurred and in order to condone the same, the present petition has been filed.

3. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

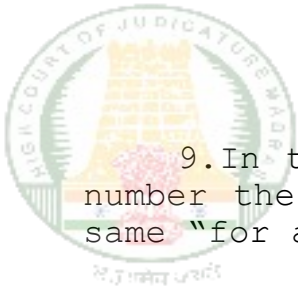
4. Perusal of records shows that the petitioner filed the suit for the reliefs of permanent injunction and mandatory injunction in respect of the suit property and the Trial Court dismissed the suit. On appeal, the First Appellate Court also dismissed the appeal. Against the concurrent Judgments and decrees passed by the Courts below, the petitioner / plaintiff filed S.A(MD)No.SR 26168 of 2018 and the same has been returned for rectifying certain defects. In representing the appeal papers, the delay of 2804 days has been occurred.

5. The petitioner is aged about 73 years. The reasons assigned on the side of the petitioner are that since she was undergoing treatment for varicose vein, she could not contact her counsel and the returned papers also got mixed up with other bundles in the Advocate's office.

6. It is a settled law that the condonation of delay is a matter of discretion of the Court. There should be a liberty, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. The length of delay is not material and acceptability of explanation is important. Even the delay of long range can be condoned, if the explanation is satisfactory.

7. It is needless to say that the condonation of delay in representation is a matter between the Court and the petitioner. Considering the reasons stated by the learned counsel for the petitioner and also considering the fact that the returned papers got mixed up with other bundles in the Advocate's office, the petitioner should not be made to suffer and refusing to condone the delay will result in meritorious matter being thrown out at the nascent stage and thereby the cause of justice being defeated, this Court is inclined to allow this petition, however, with heavy cost.

8. In view of the above, the delay of 2804 days is condoned subject to the payment of cost of Rs.2,500/- (Rupees two thousand and five hundred only) to the Chief Justice Relief Fund, within a period of one week from the date of receipt of copy of this order, failing which, this petition shall stand dismissed automatically without any further reference to this Court. This petition is accordingly ordered.



9. In the event of payment of cost, the Registry is directed to number the second appeal, if it is otherwise in order and list the same "for admission" forthwith.

WEB COPY

sd/-  
05/03/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.I)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

1. THE SUBORDINATE JUDGE,  
SANKARANKOVIL.
2. THE ADDITIONAL DISTRICT MUNSIF  
SANKARANKOVIL.

COPY TO:

1. THE SECTION OFFICER  
ACCOUNTS SECTION,  
CHIEF JUSTICE RELIEF FUND,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.
2. THE SUB ASSISTANT REGISTRAR,  
AE SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

ORDER  
IN  
CMP (MD) No.1959 of 2019  
IN  
SA (MD) No.SR26168 of 2011  
Date :05/03/2019

smn  
AE/MMS/SAR-I/27.03.2019/3P/5C