

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

Friday, the Twelfth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) No.3881 of 2019
IN
SA(MD) No.SR35785 of 2015

SARASWATHIAMMAL

... PETITIONER/ APPELLANT

Vs

1 MEENAKSHIAMMAL

2 PICHAIMANI

... 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 1290 days in representing the above SA.SR.No.35785 of 2015 and thus render justice.

PRAYER IN SA(MD) No.SR35785 of 2015:

To set aside the Judgment and Decree of the Lower Appellate court dated 09.03.2015 passed in A.S.No.298 of 2004 on the file of Additional Subordinate Judge, Dindigul, confirming the Judgment and Decree of the Trial court dated 27.11.2003 passed in O.S.No.326 of 2001 on the file of II Additional District Munsif, Dindigul.

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.R.NANDAKUMAR, Advocate for the petitioner and of Not appeared for the respondents either in person or through by an Advocate, the court made the following order:-

This petition has been filed by the petitioner seeking to condone the delay of 1290 days in representing the above Second Appeal.

2.The learned counsel for the petitioner would submit that the petitioner/plaintiff filed O.S.No.326 of 2001 for the relief of permanent injunction in respect of the properties, which have been shown as 'A B C D' and 'A B' in the Rough Plan appended with the plaint and also for the relief of mandatory injunction in respect of loft put up in 'A B C D' portion, walls put up in 'C D' and 'A B' and the cross wall put up from 'E F G' pillar to 'B D' wall. The Trial Court dismissed the suit. On appeal, the First Appellate

Court allowed the suit in part and granted the relief of mandatory injunction only in respect of the structures put up in between the points 'A B C D'. Against the disallowed portion, the petitioner / plaintiff filed S.A(MD)No.SR 35784 of 2015 and the same has been returned for rectifying certain defects. The returned papers got mixed up with other bundles in the Advocate's office. Therefore, the delay mentioned in the petition has occurred. The delay is neither wilful nor wanton. If the delay is not condoned, the petitioner will be put into irreparable hardship. Thus, he prayed to condone the same.

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

4.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.

5.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.

6.In view of the above, the delay of 1290 days is condoned subject to the payment of cost of Rs.5,000/- (Rupees five thousand only) to the Legal Services Committee, attached to this Bench, 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.

7.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.

sd/-
12/04/2019

/ TRUE COPY /

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

TO

1 THE ADDITIONAL SUBORDINATE JUDGE,
DINDIGUL.

2 THE II ADDITIONAL DISTRICT MUNSIF,
DINDIGUL.

+1. C.C. to M/S.R.NANDAKUMAR, Advocate SR.No. 6922

COPY TO:

1 THE AUTHORISED OFFICER,
LEGAL AID SERVICES COMMITTEE,
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.3881 of 2019
IN
SA (MD) No.SR35785 of 2015
Date :12/04/2019

JM/PN/SAR 3/25.04.2019/3P/6C

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