



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

Thursday, the Fourth day of July Two Thousand Nineteen

Present

The Hon`ble Mrs.Justice R.THARANI

CMP(MD). No.3971 of 2019
in AS(MD)No.67 of 2009

1. Jamunarani
2. G.Rajagopal

... Petitioners/Appellants

Vs

1. S.JOHN JOSEPH XAVIER,

... Respondent/Respondent

Prayer :-

This Civil Miscellaneous Petition is filed to condone the delay of 748 days in filing the petition in restore the first appeal in AS(MD)No. 67 of 2009.

Prayer in A.S.(MD)No.67 of 2009:-

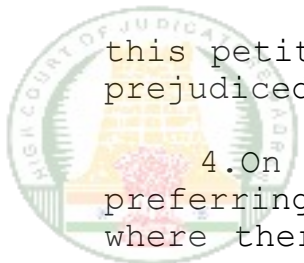
Appeal Suit is filed under Section 96 of Civil Procedure Code, to set aside the decree and Judgment dated 28.10.2008 of the Additional District Sessions Judge, Fast Track Court NO.1, Madurai, in OS.128/2006.

ORDER:- This Civil Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.S.MEENAKSHISUNDARAM, Senior Counsel FOR N.GA.NATARAJ, Advocate for the petitioners and of MR.K.JEGADEESAN, Advocate for the Respondent, this Court made the following order:

Both sides present.

2.This petition is filed to condone the delay of 748 days in filing the petition to restore the first appeal in A.S.(MD)No.67 of 2009.

3.On the side of the petitioners, it is stated that when the appeal was listed on 21.02.2017 under the caption "for dismissal", the previous counsel of the petitioners, who was aged and was suffering from age born diseases, was not able to be present and conduct the case on that date, therefore, this Court dismissed the appeal. In the meanwhile, the respondent filed E.P.No.4 of 2019 and the petitioners received a summon from the District Court, Madurai, thereafter, the petitioners contacted their Advocate, and they came to know that the earlier Advocate could not appear on 21.02.2017, due to his illness. Hence, the petitioners engaged the present Advocate to conduct the case and he intimated that the case was dismissed for the non appearance of the petitioners' Advocate. If



this petition is not allowed, the right of the petitioners will be prejudiced.

4. On the side of the petitioners, it is stated that delays in preferring appeals to be condoned, in the interest of justice, where there is no gross negligence or deliberate inaction or lack of *bonafide* is imputable to the party seeking condonation of delay. A judgment of the Hon'ble Supreme Court in the case of **Bhivchandra Shankar More Vs. Balu Gangaram More and others** reported in **2019 SAR (Civil) 632** is cited.

5. On the side of the respondent, it is stated that every day of delay is to be explained, old age of the petitioners' counsel cannot be a valid ground for condoning the delay. Except this single point that the petitioners' counsel is aged, the petitioners have not come forward with any other reason for condoning the delay and hence, he prayed the petition to be dismissed.

6. In the above circumstances, though the reasons stated in the affidavit filed in support of this petition, are not satisfactory, an opportunity is given to the petitioners to put forth their case is to be given. Accordingly, in the interest of justice this petition is allowed and the delay of 748 days is condoned, on condition of payment of cost of Rs.1,000/- (Rupees One Thousand only) to the respondent's counsel on or before 10.07.2019.

7. Call on 12.07.2019, "for reporting compliance".

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

TO

THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
FAST TRACK COURT NO.1, MADURAI.

COPY TO

The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.

ORDER DATED : 04/07/2019

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ORDER

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CMP(MD). No.3971 of 2019
in AS(MD) No.67 of 2009

Giving direction and etc.
as stated within.