



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

Thursday, the Twenty Eighth day of March Two Thousand Nineteen

PRESENT

WEB COPY

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

**CMP(MD) No.605 of 2019**

**IN**

**SA(MD) No.SR52586 of 2018**

MOHAMED MARIYAM (DIED)

- 1) MAHARUNISHA,
- 2 NOORJAHAN,

SHEIK MOHAMED (DIED)

- 3 UMMAL HAIYA,

... PETITIONERS/APPELLANTS

Vs

LABEER MARACAIYAR (DIED)

- 1 HYDER ALI,
- 2 HAWA AMMAL,
- 3 HUMARIA AMMAL,
- 4 SAVUDA AMMAL,
- 5 RABEEKA AMMAL,
- 6 SABURAN JEMEELA,
- 7 MAJBA AMMAL,

... 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 1893 days in filing Second Appeal and thus render justice.

**PRAYER IN SA(MD) No.SR52586 of 2018:-**

To set aside the judgment and Decree dated 26.07.2013 made in A.S.No.19 of 2002 on the file of the Subordinate Judge, Pattukottai, confirming the judgment and decree dated 29.11.2001 made in O.S.No.583 of 1993 on the file of the Court of the District Munsif, Pattukottai and allow the Second Appeal as prayed for and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.J.JASEEM MOHAMED, Advocate for the petitioner and of MR.S.PRABHU FOR MR.V.K.VIJAYARAGAVAN on behalf of the Respondents 2 TO 7, the court made the following order:-



This petition is to condone the delay of 1893 days in filing the second appeal.

2. In the supporting affidavit filed for the delay, the petitioners have averred that after the dismissal of A.S.No.19/02, their lower court counsel handed over the papers to the present counsel Mr.J.Jaseem Mohamed, Madras, who in turn forwarded the papers to one Mr.Mohamed Saibu, advocate in Madurai. According to the 1<sup>st</sup> petitioner, her husband met Mr.Mohamed Saibu, advocate and apprised him of the filing of the second appeal. Thus, the petitioners were under the impression that second appeal was filed and interim orders obtained. While so, after 4 years, to their shock and surprise, they received notice in execution proceedings and immediately they contacted Mr.Jaseem Mohamed and thereafter Mr.Mohamed Saibu, advocate who stated that the petitioners that they did not follow up the second appeal in proper perspective and also stated that since copy of the decree was not sent to him, the second appeal could not be filed in time. According to the petitioners, the advocate Mr.Mohamed Saibu, did not advise them properly thereby failed to discharge his duties in a benefiting manner. Thereafter, they contacted their lower court counsel and applied for decree copy on 26.06.2018 and obtained decree copy on 09.10.2018, on which date itself, decree copy was sent to Mr.Mohamed Saibu, advocate. In spite of the same, the counsel had not filed any appeal. According to the petitioners, the original decree contained only two items of properties, whereas the decree furnished to them contained four items of properties, as a result of which, Registry refused to file appeal with dispense with petition. Therefore, the petitioners would submit that the delay of 1830 days occurred and prays to condone the same.

3. Mr.J.Jaseem Mohamed, counsel for petitioners also filed a supporting affidavit narrating the above facts and would state that contributory negligence on the part of a few has put the petitioners in a very piquant situation out of which they are not able to wriggle out even at this distance time, for which, the petitioners should not be penalised or punished. Therefore, he prays to condone the delay.

4. Learned counsel for the respondents would contend that to cover up the conduct of the petitioners, they put the blame unnecessarily on their advocates and the allegation that the petitioners came to know the non filing of appeal only after receipt of notice in E.P. is incorrect. According to the learned counsel, filing of the appeal with the above enormous delay is only to harass the respondents and therefore, prayed for dismissal of this petition.

5. Be that as it may, considering the averments made by the petitioners and also the supporting affidavit filed by the counsel for petitioners that the above delay has occurred due to contributory negligence on the part of a few, for which, the



petitioners should not be penalised, to meet the ends of justice, this Court is inclined to condone the delay on terms.

6. Accordingly, delay shall stand condoned subject to payment of cost of Rs.2,000/- (Rupees Two Thousand only) to the Legal Services Authority on or before 04.04.2019, failing which, this petition shall stand dismissed automatically without further reference to the court. In the event of payment of cost within the time stipulated and if cost memo is filed to that effect, the Registry is directed to number the appeal, if the papers are otherwise in order and list the same for admission.

sd/-  
28/03/2019

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

TO

1. THE SUBORDINATE JUDGE, PATTUKOTTAI.

2. THE DISTRICT MUNSIF, PATTUKOTTAI.

COPY TO: 1. THE OFFICER INCHARGE,  
LEGAL SERVICES AUTHORITY,  
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.605 of 2019  
IN  
SA(MD) No.SR52586 of 2018  
Date :28/03/2019

AE/JC/SAR-II/02.04.2019/3P/5C