



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

Thursday, the Seventh day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP (MD) No.3176 of 2018

IN

SA (MD) SR. No.45779 of 2010

1.N.JEYASURYA,
2 N.SREENANTHINI

... PETITIONERS/APPELLANTS

Vs

1.E.GOVINDARAJ,
2 M.KRISHNASAMY
3 M.K.NAGARAJ,
4 K.PRANESHKUMAR,
5 D.PRABAVATHI
6 V.LAKSHMI

... 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 2673 days in representing the above second appeal in S.A.SR.No.45779 of 2010 and pass such further or other orders as this Honourable Court.

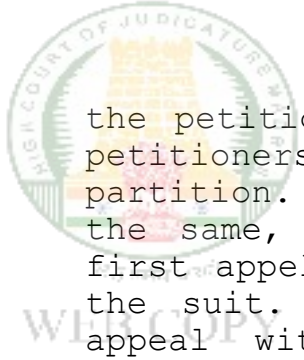
PRAYER IN SA (MD) SR. No.45779 of 2010:

To prefer this Memorandum of Grounds of Second Appeal against the judgment and decree dated 18.02.2010 passed in A.S.No.26 of 2007 on the file of Principal District Court, Dindigul District, Dindigul reversing the judgment and decree dated 20.01.2007 passed in O.S.No.67 of 2001 on the file of Sub-Court, Palani.

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.D.VENKATESH, Advocate for the petitioner and of MR.R.RAMADURAI, Advocate for R1 and of Respondents 2 to 6 not appeared either in person or by an advocate, the court made the following order:-

This petition has been filed by the petitioners seeking to condone the delay of 2673 days in representing the above Second Appeal.

2. It is stated in the petition that the third respondent is the father of the petitioners and other respondents are related to



the petitioners. On behalf of the petitioners, the mother of the petitioners filed the suit against the respondents herein for partition. The trial Court has partly decreed the suit. Aggrieved by the same, the first respondent herein preferred an appeal. The first appellate Court has allowed the appeal and thereby dismissed the suit. The mother of the petitioners presented this second appeal with 158 days delay. However, for want of certain particulars, the Registry returned the papers. But, the returned papers was misplaced in the office of the counsel. As the office was shifted twice in between the years 2010 and 2017, the counsel could not able to trace the papers immediately. Thus, the delay mentioned in the petition has occurred. The petitioners' mother being an illiterate did not take follow up action after entrusting the same to the counsel. The petitioners recently attained majority. The delay is neither wilful nor wanton. If the delay is not condoned, the petitioners will be put into irreparable hardship. Thus, they prayed to condone the same.

3. The learned counsel appearing for the petitioner reiterated the above averments made in the petition.

4. The learned counsel appearing for the first respondent vehemently opposed to grant the relief. Though notice served to the respondents 2 to 6, none appeared on behalf of them.

5. It is a settled law that the condonation of delay is a matter of discretion of the Court. There should be a liberal, 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.

6. It is needless to say that the condonation of delay in representation is a matter between the Court and the petitioners. Considering the reasons stated by the learned counsel for the petitioners and also considering the fact that now the petitioners attained majority and it is a reversal finding 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 for their failure to take follow up action of the appeal proceedings.

7. In view of the above, the delay of 3837 days is condoned subject to the payment of cost of Rs.3,000/- (Rupees three thousand only) to the Babbles Day Care, being run by the Women Lawyers Association, Madurai Bench of Madras High Court, Madurai, 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.



8. 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.

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sd/-
07/03/2019

/ TRUE COPY /

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

TO

1.THE PRINCIPAL DISTRICT JUDGE,
DINDIGUL DISTRICT.

2.THE SUBORDINATE JUDGE,
PALANI.

COPY TO:-

1.THE OFFICER INCHARGE
BABBLER DAY CARE, BEING RUN BY THE WOMEN
LAWYERS ASSOCIATION, 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.3176 of 2018
IN
SA (MD) SR. No.45779 of 2010
Date :07/03/2019

gcg
AE/MMS/SAR-I/27.03.2019/4P/5C