



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.04.2019
CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.M.P. (MD) . No.5356 of 2017 in
Review Application (MD) (SR)No.30012 of 2015
against C.M.S.A. (MD) .No.2 of 2009

N.Mathavan Pillai

... Petitioner/Petitioner

Vs.

1.K.Subbammal

2.V.Sudharsan

... Respondents/Respondents

PRAYER in Rev.Aplc.SR.30012 of 2015: Review Application filed under Order 47 Rule 1 and 2 read with Section 114 of C.P.C, to review the order dated 15.04.2015 made in C.M.S.A.(MD).No.2 of 2009, on the file of this Court.

Prayer in CMP(MD) .No.5356/ 2017 :

This Petition filed under Order IV Rule 9(4) of A.S. Rules, praying to condone the delay of 560 days in representing the return papers in the above Review Application SR(MD).No.30015 of 2015 in CMSA(MD).No.2 of 2009.

Prayer in CMSA(MD) . 2/ 2009 :

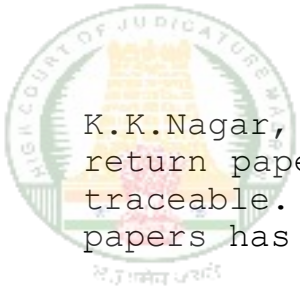
This Civil Miscellaneous Second Appeal is filed under Order 21 Rule 58 r/w Section 100 CPC against the Judgment and Decree passed in CMA.No.17 of 2008 on the file of Principal District Court, Kanyakumari District at Nagercoil, dated 10.11.2008 confirming the order passed in EA.136 of 2000 in EP.10 of 1998 in OS.82/1997 on the file of Principal Sub Court, Nagercoil dated 02.04.2008

For Petitioner : Mr.H.Thayumanaswamy

O R D E R

C.M.P. (MD).No.5356 of 2017 has been filed by the petitioner to condone the delay of 560 days in re-presenting the returned papers in the above Review Application.

2. According to the learned counsel for the petitioner, his clerk left to his home without informing about the returned papers to the learned counsel on an urgent call from his relatives that his mother was hospitalized. The Advocate clerk did not come back to the office. Meanwhile, the learned counsel has shifted his office from



K.K.Nagar, Madurai to K.Pudur, Madurai. During the transit, the return papers got mixed up with other disposed bundles and were not traceable. Thus, the delay of 560 days in representing the returned papers has occurred.

3. The delay in filing appeal or representation can be condoned only when the party gives valid and sufficient reason for condoning the delay. The intention of the parties must be bonafide and not malafide. The other party should not be prejudiced by condoning the delay. In the present case, the reason given by the petitioner to condone the delay in representing the returned papers is not valid and sufficient as the petitioner has not furnished the details as to when the petition was returned, when the clerk took the returned papers, when he left for his own town, when the advocate shifted his office and when the bundle was traced in the office of the advocate.

4. In the result, this Civil Miscellaneous Petition is dismissed and the Review Application (MD) SR No.30012 of 2015 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal District Judge,
Kanyakumari District, Nagercoil
2. The Principal Sub Judge,
Nagercoil

+1 CC to MR.H.THAYUMANASWAMY, Advocate (SR-60135[F] dated 10/04/2019)

C.M.P. (MD) . No.5356 of 2017 in
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RGR

MK (03.07.2019) 3P 4C