



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

Tuesday, the Thirtieth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice B.PUGALENDHI

CMP(MD) Nos.7176 and 7177 of 2016

IN

REV.APLC(MD) Nos.SR20661 & SR20662 of 2016

CMP(MD) No.7176 of 2016

1 GANGADEVI

2 KUMUDHA

... PETITIONERS/PETITIONERS

Vs

1 VENUGOPAL

2 KANNAN

3 LOGAKANNAN

4 VEDAVALI

... RESPONDENTS/RESPONDENTS

PRAYER CMP(MD) No.7176 of 2016

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 463 days in filing the REV.APLC.(MD). SR.No.20661/2016 and thus render justice.

PRAYER IN REV.APLC. (MD) .SR.No.20661/2016

To review the Judgment and Decree passed in S.A(MD) No. 261 of 2012 on the file of this Hon'ble Court dated 01.04.2015 and allow the review application and render justice.

Prayer in SA(MD) . 261/ 2012 :

This appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 07.12.2011 made in A.S.No. 46 of 2011 by the Additional District Judges Court (FTC - II) at Tiruchirapalli reversing the Judgment and Decree dated 30.04.2008 made in OS.No.89/2004 by the First Additional Subordinate Judges Court at Tiruchirapalli.

CMP(MD) No.7177 of 2016

1 KUMUDHA

2 GANGADEVI

... PETITIONERS/PETITIONERS

Vs



1 VENUGOPAL
2 LOGAKANNAN
3 KANNAN
4 VEDAVALLI

... RESPONDENTS/RESPONDENTS

WEB COPY

PRAYER IN CMP(MD) No. 7177 of 2016

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 463 days in filing the REV.APLC.(MD). SR.No.20662/2016 and thus render justice.

PRAYER IN REV.APLC. (MD) .SR.No.20662/2016

To review the Judgment and Decree passed in S.A(MD) No. 262 of 2012 on the file of this Hon'ble Court dated 01.04.2015 and allow the review application and render justice.

Prayer in SA(MD) . 262/ 2012 :

This appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 07.12.2011 made in A.S.No. 235 of 2008 by the Additional District Judges Court (FTC - II) at Tiruchirapalli reversing the Judgment and Decree dated 30.04.2008 made in OS.No.143/1990 by the First Additional Subordinate Judges Court at Tiruchirapalli.

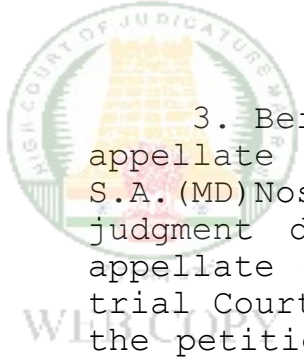
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. S.RAMESH @ RAMIAH, Advocate for the petitioner (Legal Aid Counsel) in both the petitions and of Mr.P.THIAGARAJAN, Advocate on behalf of the 1st Respondent, in both the petitions, the court made the following order:-

Reserved on : 01.02.2019

Pronounced on : 30 .04.2019

These Civil Miscellaneous Petitions have been filed to condone the delay of 463 days in filing the Review Applications in Rev.Aplc. (MD) Nos.SR20661 & SR20662 of 2016.

2. The petitioners before this Court have filed a suit in O.S.No.143 of 1990 before the I Additional Sub Court, Tiruchirappalli, for the relief of partition of 2/5 shares in the suit schedule properties. They have also filed another suit in O.S.No.89 of 2004 before the same Court for the relief of declaration. The trial Court, vide common judgment dated 30.04.2008, dismissed both the suits. Aggrieved, the petitioners preferred appeals in A.S.Nos.235 of 2008 & 46 of 2011 before the Additional District Judge, Tiruchirappalli and the appellate Court, vide common judgment dated 07.12.2011, has partly allowed the suits.



3. Being dissatisfied with the judgment and decree of the lower appellate Court, the first respondent preferred second appeal in S.A.(MD)Nos.261 & 262 of 2012 before this Court and this Court, by judgment dated 01.04.2015, set aside the judgment of the lower appellate Court and confirmed the dismissal of suit passed by the trial Court. Challenging this judgment and decree of the High Court, the petitioners herein approached the Hon'ble Supreme Court by way of special leave petition with a delay of 213 days. The Hon'ble Supreme Court by order dated 11.04.2016 dismissed the condone delay petition and has further observed that even on merits, there is no substance in the petitions.

4. According to the petitioners, there are some errors apparent on the face of the record in the judgment passed in the second appeal, which needs to be reviewed. Therefore, they have filed the present review petitions. It is the case of the petitioners that they are uneducated and their Advocate failed to follow up the case, besides the fact that the present review applications are filed after the dismissal of the SLPs. Hence, there was a delay of 463 days in filing the review petition and prayed for allowing the present petitions. In fact, the petitioners have appeared before this Court as party-in-person.

5. Learned Counsel for the first respondent, on the other hand, filed a detailed counter affidavit contending that the Hon'ble Supreme Court, not only dismissed the condone delay petition, but also dismissed the case of the petitioners on merits. Therefore, as per the law of merger, the judgment passed in the second appeal cannot be reviewed, as such, the present applications seeking condonation of delay is not at all maintainable. It amounts to abuse of process of Court. In support of his case, the learned Counsel has relied upon several decisions of the Hon'ble Supreme Court. Apart from the above, the learned Counsel has raised one another ground that the delay of 463 days in filing the present review petitions includes the delay of 213 days in filing the SLP, which has been refused to be condoned by the Hon'ble Supreme Court. Therefore, he contended that the present condone delay petitions needs to be dismissed *in limini*.

6. The point now to be addressed is as to the condonation of delay. There is a delay of 463 days in filing the review applications, which includes the delay of 213 days in filing the SLP before the Hon'ble Supreme Court.

7. This Court taking note of the fact that the petitioners are illiterate and was unaware about the further steps to be taken in the case and moreover, being satisfied with the reasons stated for the delay of 463 days in filing the review petition, is inclined to condone the delay and the same is accordingly, condoned.

8. Since the learned Counsel for the first respondent has raised a legal plea as regards the maintainability of this



application, this Court, upon the consent of the petitioners, appoints Advocate Mr.S.Ramesh @ Ramiah, to assist this Court on behalf of the petitioners.

9. Mr.S.Ramesh @ Ramiah, learned Counsel took this Court through the decision of the Hon'ble Supreme Court reported in **(2012) 12 SCC 291**, in the case of **Khoday Distilleries Limited and others v. Mahadeswara S.S.K. Limited**, wherein, the Hon'ble Supreme Court has held that there are conflicting views as regards the maintainability of a review petition after *in limine* dismissal of SLP. Therefore, the Hon'ble Supreme Court has referred the matter to a larger bench.

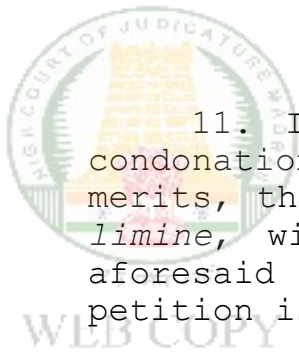
10. Pending this petition, the Hon'ble Supreme Court has answered the reference in its decision reported in **2019 SCC Online SC 308**, affirming the conclusions rendered by the three Judge Bench of the Hon'ble Supreme Court in **Kunhayammed and others v. State of Kerala and another**, reported in **(2000) 6 SCC 359**. The relevant portion from the said decision is extracted as follows:

"... 44. ...

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case, it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, ie., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked, the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation."



11. In the instant case, SLP was dismissed at the stage of condonation of delay itself, with an observation that even on merits, there is no substance. Since the petition was dismissed in *limine*, without giving any reasons, this Court, in view of the aforesaid decision of the Hon'ble Supreme Court, holds that review petition is very well maintainable.

12. This Court places on record the valuable assistance rendered by Mr.S.Ramesh @ Ramiah, learned Counsel. Considering the legal service rendered by him, this Court fixes a sum of Rs.5,000/- as his remuneration, which shall be borne by the Legal Aid Cell.

13. The Registry is directed to number the review petition, if it is otherwise in order and post it in usual course.

sd/-
30/04/2019

/ TRUE COPY /

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

TO

- 1 THE ADDITIONAL DISTRICT JUDGES COURT (FTC - II)
TIRUCHIRAPALLI
- 2 1st ADDITIONAL SUBORDINATE JUDGES
TIRUCHIRAPALLI.

COPY TO:

- 1.THE AUTHORITY OFFICER,
LEGAL AID SERVICE,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 2.THE SUB ASSISTANT REGISTRAR, AE SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3.Mr.S.RAMESH @ RAMIAH,
LEGAL AID SERVICE COUNSEL,
LEGAL AID SERVICE COMMITTEE,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CMP(MD) Nos.7176 and 7177 of
2016 IN REV.APLC(MD)
Nos.SR20661 & SR20662 of 2016
Date :30/04/2019



WEB COPY