



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Thursday, the Nineteenth day of September Two Thousand and Nineteen

PRESENT

The Hon'ble Mrs.Justice J.NISHA BANU

CMP(MD).No.4684 of 2019 in S.A(MD)No.27 of 2013

1. Silumbayee
2. Velmurugan
3. Kalyani
4. Karuppasamy

... Petitioners/Applicants

Vs

- 1 Veeramalai Goundar
- 2 Rajammal
- 3 Murugesan
- 4 Ramachandran
- 5 Arumugam

... Respondents/Respondents

Prayer in CMP(MD). No.4684 of 2019:

This petition is filed under Section 5 of the Limitation Act, to condone the delay of 2045 days in filing the petition to set aside the order dated 5.7.2013 passed in SA(MD).No. 27 of 2013 on the file of this Honourable High Court and thus render justice.

Prayer in S.A(MD)No.27 of 2013:

Second Appeal filed under Section 100 of CPC against the Judgment and decree dated 23/12/2010 passed in A.S.No.36 of 2008 on the file of Principal Subordinate Judge, Trichy thereby confirming the Judgment and decree dated 03/09/2007 passed in O.S.No.312 of 2000 on the file of District Munsif Court, Manapparai.

ORDER:- This Petition is coming upon for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.N.R.Balaji, Advocate for the Petitioners and Thiru.D.S.Haroon Rasheed, Advocate for the respondents, and this Court made the following order:



This petition has been filed by the petitioners seeking to condone the delay of 2045 days in filing a petition to set aside the order dated 05.07.2013 passed in S.A(MD)No.27 of 2013.

2.The petitioners / plaintiffs filed the suit in O.S.No.312 of 2000 for the reliefs of declaration and permanent injunction. The Trial Court has dismissed the suit. Against which, the petitioners / plaintiffs filed A.S.No.36 of 2008 before the first appellate Court and the same was also dismissed. Against the concurrent Judgments and decrees passed by the Courts below, the petitioners / plaintiffs have filed S.A(MD)No.27 of 2013. The second appeal was posted finally on 26.06.2013 and when the matter was taken up for hearing on 26.06.2013 and 05.07.2013, there was no representation for the appellants / plaintiffs. Therefore, the second appeal was dismissed for default, vide Judgment, dated 05.07.2013. In filing a petition to set aside the same, there was a delay of 2045 days and in order to condone the same, the present petition has been filed.

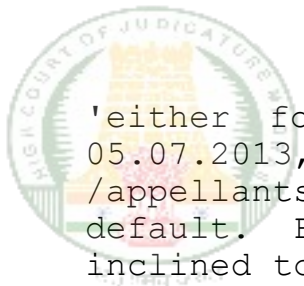
3.The respondents have filed a counter stating that the present petition has been filed after a lapse of 2045 days so as to drag on the proceedings and the reasons assigned by the petitioners / appellants are untenable.

4.Heard the learned counsel for the petitioners as well as respondents.

5.On a perusal of records, this Court does not find any valid reason for such an inordinate delay. In fact, in the affidavit filed in support of the condone delay petition, it has been stated as follows:

"... .. 4.I submit that my counsel had informed me about the same and my counsel had filed the petition to set aside the order dated 05.07.2013 and same was assigned with M.P.SR.No.31192 of 2013. The above petition was returned for certain compliance. My counsel clerk had taken the return, but it seems he had not represented the same. Now the whereabouts of the bundle was not known to my Counsel and same is not traceable. In the meantime my counsel was hospitalized and after recovery my counsel is filing this petition".

6.The length of delay is not a minimal one. It is 2045 days. It is a settled principle that reason for each and every day delay has to be given. But, for such an inordinate delay, the reasons given by the petitioners / appellants are not satisfactory. It is only an attempt to prolong the proceedings. It is also seen that the second appeal was posted finally on 26.06.2013 and since there was no representation on behalf of the appellants on that day, the second appeal was directed to be posted on 05.07.2013, under the caption



'either for disposal on merits or for dismissal' and even on 05.07.2013, there was no representation on behalf of the petitioners /appellants and therefore, the second appeal was dismissed for default. Even on merits and the reasons assigned, this Court is not inclined to condone the delay.

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7. In such a view the matter, this petition is dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Sub Judge, Trichirapalli.
2. The District Munsif, Manapparai.

+ 1 cc to Mr.D.S.Haroon Rasheed, Advocate Sr.No.87832.

ORDER DATED : 19/09/2019

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ORDER

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CMP(MD) . No.4684 of 2019
IN
S.A(MD)No.27 of 2013

Giving direction and etc.
as stated within.

CS(17.10.2019) 3P 4C