



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Thursday, the Fifth day of September Two Thousand Nineteen
PRESENT

WEB COPY

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) . No.4787 of 2019
in AS(MD).No.194 of 2014

P.Rajalakshmi

... Petitioner/Appellant

Vs

1 K.Amaravathi

2 N.Lakshmi

3 S.Saraswathi

4 J.Rajathi

5 S.Dhanapackiam

... Respondents/Respondents

Prayer in CMP(MD) . No.4787 of 2019 :-

This Petition is filed Under Section 5 of the Limitation Act of the Civil Procedure Code praying to condone the delay of 117 days in the presenting the petition to set aside order dated 06.11.2017 and passed in AS.No.194 of 2014 on the file of this Honourable Court.

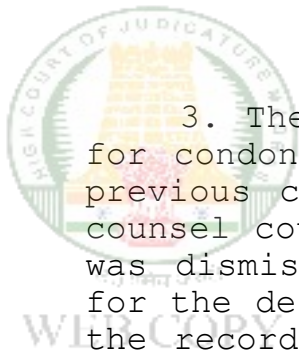
Prayer in AS(MD) . 194/ 2014 :

This First Appeal filed Under Section 96 of Civil Procedure Code R/W Order 41 Rule of Civil Procedure Code praying to set aside the Decree and Judgment made in O.S.No.146 of 2011 on the file of the VI Additional District Court, Madurai dated 05.04.2014 and allow this Appeal and thus render justice.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.A.Mohanram, Advocate for the Petitioner and of Mr.R.Vijayakumar, Advocate For R1 and Mr.S.Balamurugan, Advocate For R2 to R5, this Court made the following order:

This petition has been filed by the petitioner/appellant seeking condonation of delay of 117 days in filing a petition to set aside the order 06.11.2017 passed in A.S.(MD)No.194 of 2014.

2. Heard the learned counsel for both sides.



3. The reason stated by the learned counsel for the petitioner for condoning the delay of 117 days is that since the name of the previous counsel was printed in the cause list, the newly engaged counsel could not appear before the Court and therefore, the appeal was dismissed for default. Absolutely, there is no reason stated for the delay of 117 days in filing the petition. It is seen from the record that the Vakalath filed by the newly engaged counsel has been returned by the Office pointing out certain defects. But, it has not been represented and therefore, the name of the earlier counsel has been mentioned in the cause list, for which the Office cannot be found fault with.

4. The respondents 1 and 2 have filed their counter stating that after dismissal of the appeal, the petitioner/appellant remained absent in the final decree proceedings and therefore, an ex parte final decree has been passed on 27.03.2018 in I.A.No.167 of 2014 in O.S.No.146 of 2011 and an application filed by the petitioner for setting aside the ex parte final decree was also dismissed on 30.04.2019. As against the final decree, the petitioner/appellant has not filed an appeal. The present application is not maintainable, as the final decree itself has been passed. The respondents have further stated that in the execution proceedings, the petitioner herein appeared and filed his counter on 08.02.2019 and that the proceedings is now posted for arguments.

5. In view of the above, this Civil Miscellaneous Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

TO
The VI Additional District Court,
Madurai

+ 1cc to Mr.R.Vijayakumar, Advocate, Sr.No.85477
+1.CC. To Mr.S.Balamurugan, Advocate in SR No.14922

ORDER DATED : 05/09/2019

ORDER

CMP(MD). No.4787 of 2019
in AS(MD).No.194 of 2014
Giving direction and etc.
as stated within.

MK (18.10.2019) 2P 4C

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