



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.5162 of 2018
IN
SA(MD) No.SR51294 of 2012

GUNASEKARAN

... PETITIONER/APPELLANT

Vs

1.VANITHA PAPPAIAH(DIED)
2 SAHAYARAJ
3 IMMACULATE SAROJA
4 ARBERT

MEMO PRESENTED IN COURT ON 26.10.2018
AND RECORDED AS R1 DIED AND R2 TO R4 ARE
THE LEGAL HEIRS OF R1WHO WERE ALREADY ON RECORD
AS PER ORDER DT.26.10.2018 IN
CMP(MD).5162/2018 BY RTJ

... 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 1979 days in representation of the above
S.A.S.R.51294 of 2012 and thus render justice.

PRAYER IN SA(MD) No.SR51294 of 2012:

To prefer this memorandum of Second Appeal against the judgment
and Decree dated 27.07.2012 made in A.S.No.84 of 2010 on the file of
the Subordinate Judge, Ambasamudiram, by modifying and confirming
the judgment and Decree dated 26.10.2010 passed in O.S.No.26 of 2004
on the file of the District Munsif Cum Judicial Magistrate,
Cheranmahadevi.

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.P.SANTHOSHKUMAR, Advocate for the petitioner and
of Mr.S.NAVAMANI, Advocate for R2 to R4, the court made the
following order:-

This petition has been filed by the petitioners seeking to
[condone the delay of 1979 days in representing the above Second Appeal.](https://hcservices.ecourts.gov.in/hcservices/)



2. It is stated in the petition that the first respondent as plaintiff has filed the suit for declaration and permanent injunction. The trial Court decreed the suit. Aggrieved by the same, the petitioner filed an appeal and the same was also dismissed. As against the concurrent findings, the petitioner preferred the second appeal. However, for want of certain particulars, the Registry returned the papers on 22.11.2012 and the same was subsequently represented. Again, on 15.05.2014, the appeal papers were returned by the Registry. The clerk attached to the joint office of the Advocates took the returned bundle and mistakenly kept with the other Advocate's office bundle. During the year 2018 only, the bundle was traced out. Thus, the delay mentioned in the petition has occurred. The delay was only due to the mistake of the clerk of the counsel. 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 respondents 2 to 4 vehemently opposed to grant the relief stating that the reasons stated by the petitioners is not acceptable.

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 for the mistake of the Advocate's clerk, the petitioners should not be made to suffer 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.

7. In view of the above, the delay of 1979 days is condoned subject to the payment of cost of Rs.3,000/- (Rupees three thousand only) to the Legal Aid Services Committee, attached to this Bench, 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.

sd/-
07/03/2019

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/ TRUE COPY /

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

TO

1. THE SUBORDINATE JUDGE,
AMBASAMUDIRAM.
2. THE DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, CHERANMAHADEVI.

COPY TO:

1. THE AUTHORITY OFFICER,
LEGAL AID SERVICES COMMITTEE,
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.5162 of 2018
IN
SA (MD) No.SR51294 of 2012
Date :07/03/2019

TK/PN/SAR-2/27.03.2019/3P/5C