



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

Friday, the Twenty Second day of February Two Thousand Nineteen

WEB COPY

PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CMP(MD) No.8004 of 2018

IN

SA No.1563 of 2003

K.NATARAJAN

... PETITIONER/APPELLANT

Vs

BALAMMAL

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to excuse the delay of 436 days in presenting the restoration petition for second appeal and dispose of the case on merits and to pass such further or other orders as this Honourable court may deem fit and proper in this circumstances of this case and thus render justice.

PRAYER IN SA No.1563 of 2003:

This Second Appeal has been filed under section 100 of the code of the Civil Procedure against the Judgment and Decree in dated 29.07.2002 made in A.S.No.51 of 2002 on the file of the II Additional Subordinate Judge, Madurai, and revising the Judgment and Decree dated 31.10.2001 in O.S.No.47 of 2000 on the file of District Munsif Court, Melur.

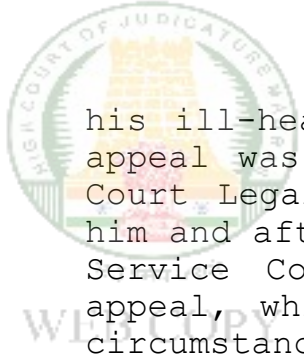
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.AROCKIA SELVI, Advocate for the petitioner and of MR.R.SURIYANARAYANAN, Advocate on behalf of the Respondent, the court made the following order:-

This Civil Miscellaneous Petition is filed to excuse the delay of 436 days in representing the restoration petition for second appeal.

2.Heard both sides and perused the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The petitioner stated in his affidavit that due to severe jaundice, he took homeopathy treatment and there was none to inform



his ill-health to his counsel and he came to know that the second appeal was dismissed for default and then, he approached the High Court Legal Aid Services Committee for appointment of counsel for him and after appointment of the counsel by the High Court Legal Aid Service Committee, he filed the petition to restore the second appeal, which was dismissed for default and in view of the above circumstances, there is a delay of 436 days in representing the petition for the second appeal in time and prays that the petition may be allowed.

4. On the other hand, the learned counsel for the respondent argued that the petitioner failed to prove his illness and further in the EP proceedings, the petitioner appeared and hence, he got knowledge about the stage of the second appeal and the reasons stated in the petition are not acceptable and prays that the petition has to be dismissed.

5. In this case, this second appeal is dismissed for default on 17.04.2017. The petitioner in his petition stated that he came to know the dismissal of the second appeal in May 2018. But the respondent stated that in the EP proceedings, the petitioner appeared and hence, he know the dismissal of the second appeal and prays that the petition may be dismissed.

6. On perusal of the petition, it reveals that due to his ill health, it is not possible for the petitioner to contact his counsel. In the EP proceedings, it is not stated that summon was served on the respondent on 21.12.2017 and he appeared in person and seeks time. This petition is only to condone the day in restoring the second appeal, which was dismissed for default. The reasons stated in the petition are satisfied. Hence, in the interest of justice, this petition is allowed on terms.

7. In the result, this petition is allowed on payment of **Rs.5,000/- [Rupees Five thousand only]** to the **Chief Justice Relief Fund**, within a period of two weeks from the date of receipt of a copy of this order, failing which these petition shall stand dismissed automatically without further reference to this court.

sd/-
22/02/2019

/ TRUE COPY /

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

TO



2 THE DISTRICT MUNSIF, MELUR

COPY TO : THE OFFICER INCHARGE, LEGAL AID SERVICE AUTHORITY,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

WEB COPY

COPY TO : THE SECTION OFFICER, ACCOUNTS SECTION
(CHIEF JUSTICE RELIEF FUND),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.AROCKIA SELVI Advocate SR.No.3805

ORDER
IN
CMP (MD) No.8004 of 2018
IN
SA No.1563 of 2003
Date :22/02/2019

er
PK/JC/SAR-2/08.03.2019 : 3P/6C