



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

Monday, the Fourth day of March Two Thousand Nineteen

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PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) No.12522 of 2018

IN

SA(MD) No.SR47950 of 2018

1 CHINNAMMAL (DIED)

2 AANDICHAMY

3 ALAGU

... PETITIONERS/APPELLANTS

Vs

1 THENAMMAL

2 RAMAN

3 THE DISTRICT COLLECTOR,
DINDIGUL DISTRICT,
THADICOMBU ROAD, DINDIGUL.

... RESPONDENTS/RESPONDENTS

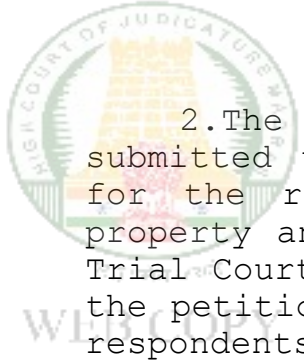
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 3837 days in filing the Second Appeal in S.A.SR.No.47950 of 2018 and thus render justice.

PRAYER IN SA(MD) No.SR47950 of 2018:

To set aside the Judgment and decree passed dated 14.02.2008 made in A.S.No.504 of 2004 on the file of the Principal Sub Court, Dindigul, Dindigul district reversing the Judgment and decree passed dated 31.01.2001 made in O.S.No.611 of 1999 on the file of the II Additional District Munsif, Dindigul, Dindigul District allow the this Second Appeal.

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.G.GOMATHI SANKAR, Advocate for the petitioner and of M/S.M.S.JEYAKARTHICK, Advocate for R1 & R2 and MR.J.GUNASEELAN MUTHIAH, Additional Public Prosecutor for R3, the court made the following order:-

This petition has been filed by the petitioners seeking to condone the delay of 3837 days in filing the above Second Appeal.



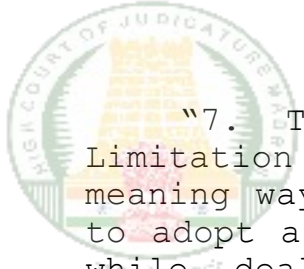
2. The learned counsel for the petitioners / plaintiffs submitted that the petitioners/plaintiffs filed O.S.No.611 of 1999 for the relief of permanent injunction in respect of the suit property and the Trial Court decreed the suit in their favour. The Trial Court has also given a clear finding as to the entitlement of the petitioners over the suit property. Aggrieved by the same, the respondents 1 and 2 / defendants 1 and 2 filed A.S.No.504 of 2004 before the First Appellate Court. But, the First Appellate Court has erroneously allowed the appeal and ultimately dismissed the suit. The first petitioner died long back. The second and third petitioners are aged above 60 years and they are the legal heirs of the first petitioner. Since the petitioners are residing in hills area, they were not informed about the Judgment passed by the First Appellate Court by their counsel. When the respondents 1 & 2 herein attempted to interfere with their peaceful possession and enjoyment of the property, the petitioners came to know about the judgment passed by the first appellate Court. Then, they immediately approached the lower Court counsel. Since the said counsel did not even make any copy application, the petitioners engaged another counsel and obtained copy of the judgment and decree, which took some more time. Thus, the delay mentioned in the petition has occurred. The delay is neither wilful nor wanton. If the delay is not condoned, the petitioners will be put into irreparable hardship. If the delay is condoned the valuable right of the parties will be decided once for all. Thus, they prayed to condone the same.

4. In support of the above contention, the learned counsel for the petitioners relied on the following decisions:

(i) A decision reported in **1998 (7) SCC 123 (N. Balakrishnan vs M. Krishnamurthy)**, wherein the Apex Court has held as follows:

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

(ii) Another decision in **Pavayammal and another vs. S.C.Chokalingam and others**, reported in **2009 (5) CTC 414**, wherein a learned Single Judge of this Court has held as follows:



"7. The word "sufficient cause" under Section 5 of the Limitation Act will have to be interpreted in a purposeful and meaning way. As a matter of fact, the Court of law is not supposed to adopt a pedantic approach instead it has to take a liberal view while dealing with the application of condonation of delay. Ordinarily a party does not stand to gain by lodging in appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the nascent stage and thereby the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main proceedings, then the matter can be decided on merits. Of course a Court of law providing due opportunities to the parties to prove their case. The judiciary is respected not on account of its power to legalise injustice on technical grounds but it is incapable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities."

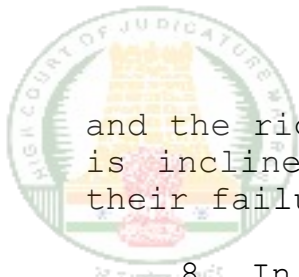
3. On the side of the respondents 1 and 2, a counter has been filed, wherein it is stated that the reasons assigned by the petitioners for condoning the huge delay of 3837 days are false. Thus, they prayed to dismiss the petition.

4. Heard the learned counsel appearing for both sides and perused the materials available on record.

5. It is 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. In this case, it is seen that the petitioners filed the suit for the relief of permanent injunction in respect of the suit property and the Trial Court decreed the suit in their favour. On appeal by the respondents/ defendants, the First Appellate Court dismissed the suit. Now, the petitioners / plaintiffs have come up with this petition seeking to condone the delay of 3837 days in filing the appeal. According to the petitioners, they are from remote area and the petitioners are aged persons and their earlier counsel did not inform about the disposal of the appeal suit. The respondent Nos.1 and 2 have simply denied the said statement of the petitioners as false. They have not specifically stated that the petitioners are not residing in the hill / remote area and the petitioners have purposefully delayed the matter.

7. Considering the reasons stated by the petitioners and also considering the fact that it is a reversal finding 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



and the rights of the parties is to be decided on merits, this Court is inclined to allow this petition, however, with heavy cost for their failure to take follow up action in the appeal proceedings.

8. In view of the above, the delay of 3837 days is condoned subject to the payment of cost of Rs.5,000/- (Rupees five thousand only) to the Legal Aid Services Committee, attached to this Bench, within a period of two weeks 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.

9. 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/-
04/03/2019

/ TRUE COPY /

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

TO

1 THE PRINCIPAL SUBORDINATE JUDGE,
DINDIGUL, DINDIGUL DISTRICT.

2 THE II ADDITIONAL DISTRICT MUNSIF,
DINDIGUL, DINDIGUL DISTRICT.

+1 CC to M/s.G.GOMATHISANKAR, Advocate SR-4223
+1 cc to Special Government Pleader, SR.No. 52062

COPY TO:

1 THE AUTHORISED 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.12522 of 2018
IN
SA(MD) No.SR47950 of 2018
Date :04/03/2019