



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

CMP(MD)No.10037 of 2016

and

SA(MD)No. SR19158 of 2016

WEB COPY

1.Subban @ Subbiah
2.Mahalingam

... Petitioners/Appellants

Vs.

1.Rengasamy
2.Somasundaram
3.Kulandhaivelu

... Respondents/Respondents

Prayer in C.M.P: This petition is filed under Order 41 Rule 3(A) r/w under Order 42 Rule (1) of C.P.C to condone the delay in 2430 days in filing the second appeal in S.A(MD) SR.No.19158 of 2016.

Prayer in Second appeal: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 01.06.2009 passed in A.S.No.38 of 2008 on the file of the Subordinate Court, Pudukkottai reversing the judgment and decree dated 03.11.2004 passed in O.S.No.72 of 2003 on the file of the Principal District Musnif, Pudukkottai.

For Petitioners	:	Mr.J.Anandkumar
For R1	:	Mr.P.Ganapathi Subramanian
For R2 & R3	:	No appearance

* * * * *

JUDGMENT

The above application has been filed for condonation of delay of 2430 days in filing the Second Appeal.

2.The reasons that have been put forward for the delay are as follows:

I) that the entire proceedings was being handed over by the first petitioner and the that the second petitioner, who is the deponent to the affidavit is not aware of the stage of the proceedings.

ii)the first petitioner due to his old age fell sick and became bed ridden.

iii) the Advocate Clerk had not applied the copy of the judgment and decree on time.



3. A counter has been filed by the respondents wherein they would contend that this application is made only with the intend of harassing them since they got a decree in their favour.

4. The learned counsels have put forward their respective cases.

5. After hearing them and perusing the papers it is seen that the deponent to the affidavit who is second petitioner has been the active participant in the entire suit. A written statement has been filed by him and evidence has been adduced only by him before the trial court as D.W.1 and the documents have also been marked through court order. The first petitioner is not an active participant and therefore the reasons given for the delay appear to be false one. Apart from the reasons that the second petitioner was not actively involved in the contest of the case, there is no case put forward.

6. Considering the said factors, I am not inclined to condone this extraordinary delay of 2430 days more particularly when the reasons for the delay are not only inadequate but also false.

7. In the result, this application is dismissed. Consequently, the Second Appeal is also dismissed at SR stage itself.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

- 1.The Subordinate Judge, Pudukkottai.
- 2.The Principal District Munsif, Pudukkottai.

+1 CC to Mr.J.Anandkumar, Advocate, Sr.No.93290.

+1 CC to Mr.P.Ganapathi Subramanian Advocate, Sr.No.93716.

CMP (MD) No.10037 of 2016

and

SA (MD) No. SR19158 of 2016

21.10.2019

CS (13.11.2019) 2P 5C