



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Thursday, the Twenty Sixth day of September Two Thousand and
Nineteen

WEB COPY

PRESENT

The Hon'ble Mrs.Justice J.NISHA BANU

CMP (MD) . Nos.3400 and 3401 of 2016
in
SA. 1993 of 1999

1. Muthusubramaniam (Died) -
2. Muthuladshmi Ammal
3. Eswaran
4. K. Rani
5. M. Natarajan ... Petitioners in both CMPs

Vs

1 Ammani Ammal (Died)
2 S. Natarajan
3 S. Eswaran ... Respondents in both CMPs

Prayer in CMP(MD). No.3400 of 2016: Petition filed under Section 5 of Limitation Act, to condone the delay of 96 days in filing the application to set aside the judgment and decree dated 13.10.2011 in SA.No.1993/1999 on the file of this Honourable Court and thus render justice.

Prayer in CMP(MD). 3401/ 2016 : Petition filed under Order 41 Rule 19 of CPC to set aside the judgment and decree dated 13.10.2011 in SA.No.1993/1999 and restore the same on the file of this Honourable Court and thus render justice.

Prayer in SA. 1993/ 1999 : This Appeal is filed under Section 100 of CPC to prefer this Memorandum of Grounds of Second Appeal against the judgment and decree dated 31.03.1998 made in A.S.No.1/93 on the file of the Subordinate Judge, Tuticorin, confirming the judgment and decree dated 14.12.1992 made in O.S.No.341/91 on the file of the DMC, Srivaikuntam.

ORDER:- These Petitions coming on for orders on this day and upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.M.P.Senthil, Advocate for the respondents, and none appeared on behalf of the petitioners, this



Court made the following order:

C.M.P. (MD).No.3400 of 2016 has been filed by the petitioners/appellants seeking to condone the delay of 96 days in filing a petition for restoration of the above second appeal, which was dismissed for non prosecution on 13.10.2011. C.M.P. (MD).No.3401 of 2016 has been filed by the petitioners/appellants for restoration of the above second appeal.

2. It is seen from the record that the suit is of the year 1991. The second appeal has been filed against the concurrent judgment in the year 1999. When the appeal came up for final hearing on 12.10.2011, there was no representation for the petitioners/appellants and hence, this Court directed to list the appeal under the caption "for dismissal" on 13.10.2011. On 13.10.2011, there was no representation on either side and hence, a learned Single Judge of this Court dismissed the second appeal for non prosecution. In the meantime, the sole appellant died. For filing an application for restoration, there occurred a delay of 96 days and hence, for condoning the said delay, the petitioners/appellants, who are the legal heirs of the deceased sole appellant, have presented the present miscellaneous petition on 06.02.2012 and it was returned pointing out certain defects. For representing the restoration petition, there occurred a delay of 151 days and after condoning the delay, the present petition has been numbered. Even for numbering this petition, the petitioners/appellants took four years.

3. The only reason stated by the learned counsel for the petitioners/appellants is that when the second appeal was called on 13.10.2011, as their counsel was engaged in another Court, he could not be present before the Court and hence, the second appeal was dismissed for default. Absolutely, the petitioners/appellants have not assigned any reason for condoning 96 days of delay. As stated earlier, even for numbering the present petition, the petitioners/appellants took four years. Now almost three years have gone from the date of numbering the petition. Thus, totally seven years have gone from the date of dismissal of the appeal. It is seen that on 02.01.2019 itself the learned counsel for the 2nd respondent filed a memo stating that the first respondent herein died on 11.05.2015 and a copy of the same was received by the learned counsel for the appellant on the same day. But, till date, no steps have been taken by the petitioners/appellants for impleading the legal heirs of the deceased first respondent. The petitioners/appellants have not shown any interest in prosecuting the matter with due diligence. The intention of the petitioners/appellants appears to be only dragging on the matter one way or the other. In view of the above, especially considering the fact that the petitioners/appellants have not assigned any reason for condoning the delay, this Court is not inclined to allow the petitioners/appellants to seek condonation of delay.



4. In view of the above, the delay petition ie., C.M.P.(MD). No.3400 of 2016 is dismissed.

5. It is seen that Registry of this Court has erroneously numbered the petition for restoration. In view of the dismissal of the delay petition, the restoration petition ie., C.M.P.(MD).No.3401 of 2016 is also dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

TO

1. The Subordinate Judge, Tuticorin,
2. The District Munsif, Srivaikuntam.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai

ORDER DATED : 26/09/2019

=====
ORDER
=====

CMP (MD) . Nos.3400 and 3401 of 2016
in
SA. 1993/ 1999

Giving direction and etc.
as stated within.

SV-2 (CO)
TR(21.11.2019) 3P 5C