



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.10.2019
CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.P (MD) No.7387 of 2016
in
S.A (MD) No.SR49542 of 2015

E.N.Besheer Ahamed Sahib (Died)
1.Fathima Bivi
2.Niyas Ahmed

(Appellants 1 and 2 brought on record as the
legal heirs of the deceased sole appellant, vide
Court order dated 06.02.2017 made in
C.M.P.No.784 of 2017 in SA.SR.No.49542 of 2015)

... Petitioners/Appellant

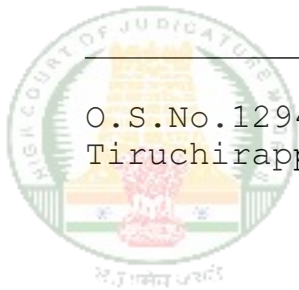
Vs.

- 1.Tiruchirappalli Co-operative House Construction
Society Limited, R.786 Thillainagar
Represented by its
Secretary Thillainagar, Tiruchy- 18
- 2.Tiruchirappalli City Municipal Corporation
Represented by its Commissioner Bharathidasan Road
Cantonment, Trichy -1
- 3.The Assistant Commissioner
K.Abisekapuram Zone Trichy City
Municipal Corporation
Trichy -1

... Respondents/Respondents

PRAYER (C.M.P. (MD) No.7387 of 2016): Civil Miscellaneous petition
filed under Order 41 Rule 3(A) read with under Order 42 Rule 1 of
Civil Procedure Code, to condone the delay of 1444 days in filing
the Second Appeal against the Judgment and Decree dated 22.08.2011
in A.S.No.12 of 2008 on the file of the Principal Subordinate Judge,
Trichy confirming the Judgment and Decree, dated 12.03.2007 in
O.S.No.1294 of 2004 on the file of the District Munsif Court,
Trichy.

PRAYER (S.A (MD) No.SR49542 of 2015): This Second Appeal filed
under Section 100 of the Code of Civil Procedure, to set aside the
Judgment and Decree, dated 22.08.2011 made in A.S.No.12 of 2008 on
the file of the Principal Subordinate Judge, Truchirappalli
confirming the Judgment and Decree, dated 12.03.2007 made in



O.S.No.1294 of 2004 on the file of the I Additional District Munsif, Tiruchirappalli.

For Petitioners	: Mr.S.M.S.Johny Basha
For R1	: Mr.P.Ganapathi Subramanian
For R2 & R3	: Mr.N.S.Karthikeyan

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ORDER

The petition in question has been filed to condone the delay of 1444 days in filing the Second Appeal against the Judgment and Decree in A.S.No.12 of 2008 on the file of the Principal Subordinate Judge, Trichy, dated 22.08.2011, whereby the learned Subordinate Judge has confirmed the Judgment and Decree of the learned I Additional District Munsif Court, Trichy in O.S.No.1294 of 2004.

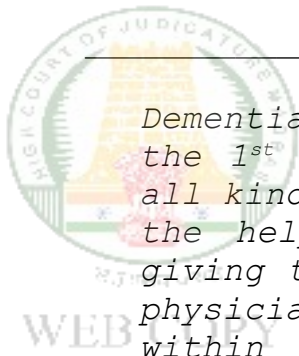
2.The appellant is the plaintiff, the plaintiff had filed a suit for declaration and permanent injunction against the respondents in respect of the suit schedule properties. After trial, the suit was dismissed and the appeal thereafter is also dismissed.

3.The appellant has not taken any steps immediately to file the Second Appeal and he is awaited for 1444 days to file the same. The reason that has been given in the petition filed in support of the application for condoning the delay is narrated at Paragraph No.5 of the affidavit, which reads as follows:

"5.I respectfully submitted that the Judgment and Decree was received the copy of the Judgment and Decree in the year 2011. Since I was 90 years old in the year 2011, I could not approach my advocate within time. Moreover I was so depressed when the case was dismissed and I could not react to the situation within time. I approached my advocate who could not take the copies, therefore, I approached another advocate to take copies of the entire documents, after taking permission from the advocate who originally appeared for me. I received the copies of the documents and the records on 19.10.2015 and I filed the case on 16.11.2015. The delay is neither wanton nor wilful but for the reasons as stated above. If the delay is not condoned, I will be prejudiced. Therefore, it is necessary that this Honourable Court ought to condone the delay in the interest of justice"

4.Pending above C.M.P., it appears that the sole appellant died. Thereafter, his wife and his son had been brought on record as his legal heirs. The Power of Attorney of the first appellant in the appeal had filed an additional affidavit, in which, paragraph No.4, reads as follows:

"4.I respectfully submit that the 1st appellant's husband was suffering from an incurable disease of " Senile



Dementia with polyneuritis c generalized debility". For this the 1st appellant was taking every care and was engrossed in all kinds of help him. The deceased was doing things only with the help of the others. The doctors were visiting home and giving treatment. The deceased suffered for past 6 years. The physician has given certificate that the deceased has to move within his house due to his neurological condition. The deceased had died on 28.09.2016 at his 92 years old".

5.The medical certificate, dated 14.10.2015 has also been produced. The affidavit filed in support of the petition for condoning the delay of 1444 days was originally filed by the deceased sole appellant on 16.11.2015. In the said affidavit, there is absolutely no whisper that the deceased sole appellant was suffering from Senile Dementia with polyneuritis c generalized debility disease. It is also to be taken note that the medical certificate which has been produced on the side of the appellant, dated 14.10.2015 is nearly a month prior to filing of the affidavit to condone the delay by the sole appellant. Therefore, it appears that the medical certificate has been created for the purpose of making of the case for condoning the delay.

6.From the reading of the affidavit filed in support of the application to condone the delay of 1444 days, the appellant has only stated that he had gone into depression on knowing the result. Further, there is no explanation for the said delay. It is no doubt true that the Court has to take a liberal approach while considering a delay application, but only if sufficient cause is shown. However, in the instant case, not only is the application bereft of details, but the original affidavit filed by the deceased petitioner and the additional affidavit which has been filed and subsequently read with the medical certificate produced clearly proves that the cause shown is false.

7.In the result, this Civil Miscellaneous Petition is dismissed. Consequently, the second appeal, which is in SR stage, is rejected. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Subordinate Judge,
Trichy

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



2.The I Additional District Munsif
Trichy

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-91734[F] dated
14/10/2019)

+1 CC to Mr.S.M.S.JOHNNY BASHA, Advocate (SR-91732[F] dated
14/10/2019)

+1 CC to Mr.N. S. KARTHIKEYAN, Advocate (SR-92007[F] dated
15/10/2019)

C.M.P (MD) No.7387 of 2016

in

S.A (MD) No.SR49542 of 2015

14.10.2019

MSA

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