



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Friday, the Twentieth day of September Two Thousand and Nineteen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD)No.5177 of 2018
in

SA (MD) No. 1097 OF 2011

1.Govindaraj
2.Nagore Pitchai

... Petitioners/Appellants

/ VERSUS /

1. Manimegalai (Died)
2. Dhanalakshmi (Died)
3. Subramanian
4. Kamala
5. Jaya (Died)
6. Vijaya
7. Chitra
8. G.Kasthuri Rengan

9. State of Tamilnadu
Represented by Collector of Thanjavur,
Collectors Office, Thanjavur.

10. Tahsildar,
Thanjavur Taluk Office, Thanjavur.

11. Gunasundari

... Respondents/Respondents

Civil Miscellaneous Petition filed under Section 5 of Limitation Act, praying this Court to condone the delay of 76 days in filing the restoration petition in S.A.No.1097 of 2011 and thus render justice.

ORDER:- This Miscellaneous Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.K.Vaithiyalingam, Advocate for the Petitioners and of Thiru.K.Guhan, Advocate For Respondents 3,4,5 & 7 and Mr.S.Ramu, Advocate For 8th Respondent and Mr.R.Sethuraman, Special Government Pleader On Behalf of the Respondents 9 and 10, this Court made the following order:



This petition has been filed by the petitioners/appellants seeking to condone the delay of 76 days in filing a petition for restoration of the above second appeal, which was dismissed for non prosecution on 06.02.2018.

2. It is seen from the records that the second appeal has been filed in the year 2011 against concurrent judgment passed by the Courts below. On 20.02.2012, it is reported by the learned counsel for the respondents that the six respondent died. After recording the same, though sufficient opportunities have been given for taking steps, till date the petitioners did not take steps to bring on record the legal heirs of the deceased sixth respondent. When the matter came up for hearing on 08.01.2018, the second appeal was adjourned to 30.01.2018 for final hearing at the request of the petitioners/appellants. On 30.01.2018, there was no representation for the petitioners/appellants and hence, the matter was directed to be listed on 06.02.2018 under the caption "for dismissal". Even on 06.02.2018, there was no representation for the petitioners/appellants and hence, the second appeal was dismissed for non prosecution. Now the petitioners/appellants have come up with this petition for the aforesaid prayer.

3. The only reason stated by the petitioners for condoning the delay of 76 days is that the first petitioner has been affected by jaundice and therefore, they could not contact his counsel in time and the delay of 76 days had occurred. The delay on the part of the second petitioner has not been explained. The first petitioner is aged about 45 years. The petitioners could have very well contacted his counsel through mobile phone, speed post, etc. But, he has not done so. The reason stated by the petitioners is not sufficient for condoning the delay of 76 days. In view of the above and the attitude of the petitioners/appellants in conducting the second appeal, this Court is not inclined to condone the delay.

4. In view of the above, this petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Additional Sub Judge,
Thanjavur.

2.The District Munsif,
Thanjavur.

3.The Collector, Collectors Office,
Thanjavur.

4.The Tahsildar,
Thanjavur Taluk Office,
Thanjavur.

Copy to:

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

ORDER DATED : 20/09/2019

=====
ORDER
=====

CMP(MD) . No.5177 of 2018
in
SA (MD) No. 1097 OF 2011

Giving direction and etc.
as stated within.

CS(20.11.2019) 3P 6C