

C.M.P.No.3723 of 2020
in C.M.S.A.SR.No.18240 of 2020

S.VAIDYANATHAN,J.

Petitioner herein has come up with this Civil Miscellaneous Petition, seeking to condone the delay of 3261 days in filing the above Appeal.

2. The stand taken by the Petitioner is that, he had misplaced the copy of the decreetal order dated 26.11.2010 passed by the District Court, Thiruvannamalai in C.M.A.No.12 of 2006, and he could locate the same only in August 2012. Based on the same, the Petitioner instructed his counsel to prefer the present C.M.S.A. and subsequent to the filing of C.M.S.A.SR.No.78298 of 2012, papers got misplaced and attempts made by the Petitioner's counsel to search the bundle in the Registry and in the Counsel's office went in vain. Later, the Petitioner applied for the certified copy of the impugned judgment and filed the present Appeal. According to the Petitioner, the delay in filing the above Appeal is neither wilful nor wanton.

3. Heard the learned counsel for the Petitioner.

4. The delay in the case on hand is enormous. In a similar circumstance, in **C.M.P.Nos.21784 and 21785 of 2017** filed to condone the delay of **765 days in preferring the Appeal**, a **Division Bench of this Court**, by an order dated **15.02.2018**, dismissed the said Petitions. Relevant paragraphs of the said decision are extracted hereunder:

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.

33. It is to be borne in mind that the term 'Sufficient Cause' under Section 5 of the Limitation Act, 1963 is an elastic one to enable the Court to apply the Law in a meaningful fashion, with a view to secure the ends of justice. However, 'Sufficient Cause' / 'Good Cause' is a condition precedent for exercise of discretion by the Concerned Court in regard to the 'Condonation of Delay'. If the delay in question is not either properly or satisfactorily and convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision of Hon'ble supreme Court **Brijesh Kumar V. State of Haryana reported in AIR 2014 SCC at Page 1612.**

36. The Petitioner has come with unclean hands and the Hon'ble Supreme Court in the decisions, which were cited by the Petitioner, had categorically held that the 'length of delay is not a matter, but the acceptance of explanation is only criteria and length of delay may be long, but if there is justification, long delay can also condoned'. If there is a short delay and the explanation is not satisfactory and if it is on account of smack or malafide or on account of dilatory strategy, this Court cannot help the persons, who come before this Court to condone the delay and protract the proceedings.”

5. In view of the above Division Bench ruling of this Court, and as the reasons assigned on behalf of the Petitioner herein are bereft of necessary qualitative and quantitative details, this Court is not inclined to condone the enormous delay of 3261 days, which is almost a decade.

6. In fine, **this Civil Miscellaneous Petition fails, and the same is dismissed.**

19.02.2020

Index : Yes/No
Speaking Order : Yes/No

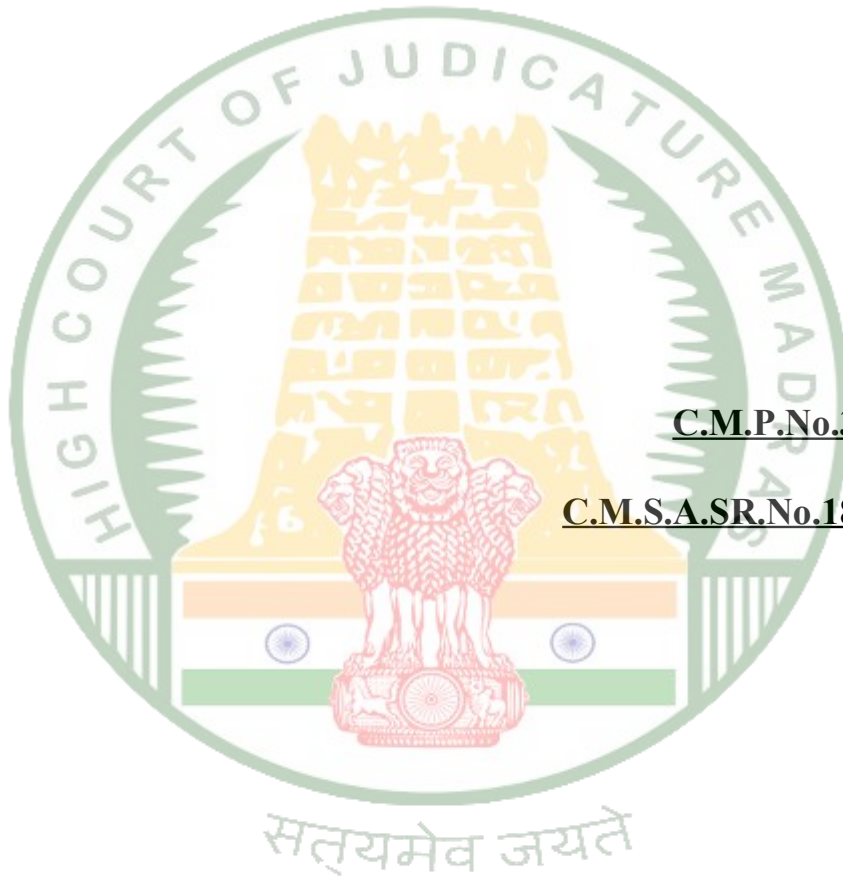
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