

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.P.No.9186 of 2016
in
A.S.SR.No.15896 of 2015

1.D.Sivasubramaniam
2.P.S.Prabavathy

..Petitioner

Vs.

1.S.Sakthivel
2.V.Prasanna
3.United India Insurance Company Limited
No.13, Nethaji Road,
Cuddalore.

.. Respondents

PRAYER: Civil Miscellaneous Petition filed under Section 173(1) of Motor Vehicles Act, to condone the delay of 1313 days in filing the Civil Miscellaneous Appeal in C.M.A.SR.No.15896 of 2015.

For Petitioner : Mr.M.N.Balakrishnan

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ORDER

The delay of 1313 days is sought to be condoned in the present miscellaneous petition.

2. The appeal is filed challenging the judgment and decree passed in M.C.O.P.No.234 of 2009 dated 25.03.2011 on the file of the Motor Accident Claims Tribunal-cum-Subordinate Judge, Pollachi.

3. The learned counsel appearing on behalf of the petitioner mainly contended that the first petitioner was aged about 60 years and the second petitioner is the wife of the first petitioner and on account of old age, they have not filed an appeal within the period of limitation. Except by stating that the petitioner was suffering from age related diseases, there is no specific reason for the purpose of condoning the enormous delay of 1313 days.

4. Undoubtedly, such a long delay cannot be condoned in a routine manner by the High Court. The reasons must be genuine and acceptable to the Court. The power of discretion cannot be exercised so as to condone the enormous delay without recording reasons. Judiciously exercise of discretionary power is mandate in the

constitution of India. Thus, the power of discretion is to be exercised discreetly so as to mitigate injustice, if any caused to the litigants and not otherwise. Law of limitation is substantive. Thus, rule is to file an appeal within the period of limitation. Condonation of delay is an exception. Therefore, the rule should prevail over the exceptions provided in the proviso clause for the purpose of exercising the discretionary power. In the event of exercising the discretionary power excessively, beyond the scope of law, then such exercise is to be construed as excess exercise of power under the Constitution, which can never be encouraged by this Court. In all circumstances, the Courts are bound to keep in mind that any proviso clause or exceptions are to be exercised discreetly so as to mitigate the injustice, if any, caused and not otherwise. Thus, the discretionary powers are to be exercised cautiously and only by recording reasons which must be based on certain sound legal principles coupled with the facts. In the event of condoning the delay, the same would cause great prejudice to the other party also. Thus, all these factors are to be considered by the Courts, while exercising the discretionary power. This being the principles to be followed, the reasons stated in the present petition is unacceptable and therefore, condonation of delay cannot be condoned.

5. The condone delay petition is filed under Section 173(1) of the Motor Vehicles Act, 1988. The appeal is to be filed within the period of limitation prescribed under Section 173(1) of the said Act. Accordingly, 90 days time limit is contemplated. The Proviso Clause to Section 173(1) stipulates that the High Court may entertain the appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. Thus, there must be sufficient cause for delay and the reasons stated for such an enormous delay in filing the appeal is also to be explained and must be an acceptable one.

6. Law of Limitation as contemplated under Section 173(1) of the Motor Vehicles Act is the law. The condonation of delay is an exception under the proviso clause. Thus, the condonation of delay can never be a mechanical affair and the High Court cannot condone the delay in a routine manner. When the law provides limitation for preferring an appeal and the proviso clause as contemplates the power of discretion to the Court to condone the delay, then such discretionary powers are to be exercised judiciously and by recording reasons. It is not as if, the High Courts can condone the delay in a routine manner, so as to dilute the law of limitation as contemplated under the said Act. Thus, in all cases, where there is an enormous

delay in filing an appeal, the Courts are bound to ascertain the reasons and its genuinity and the acceptability of such reasons. The reasons must be candid and the Courts are bound to record such reasons, while condoning long delay.

7. In all such delay, the reasons must be candid, enabling this Court to exercise the power of discretion under the Proviso Clause to Section 173(1) of the Motor Vehicles Act. In the absence of any such convincing reasons, the Courts would not condone the huge delay in a routine manner, which would defeat the very purpose of law of limitation as contemplated under the statute. Uncondonable delay cannot be condoned.

8. Power of discretion and the exception clauses are to be exercised properly and in order to mitigate certain circumstances arising on account of the certain events or incidents, which must be an acceptable one. Contrarily, certain reasons, which are flimsy and routine, cannot be a ground to condone the huge delay.

9. In the present case, the petitioner has not established any acceptable reason for the purpose of condoning the delay of 1313 days and therefore, this Court is not inclined to condone the delay and

consequently, C.M.P.No.9186 of 2016 stands dismissed and C.M.A.SR.No.15896 of 2015 is rejected at the SR Stage itself. No costs.

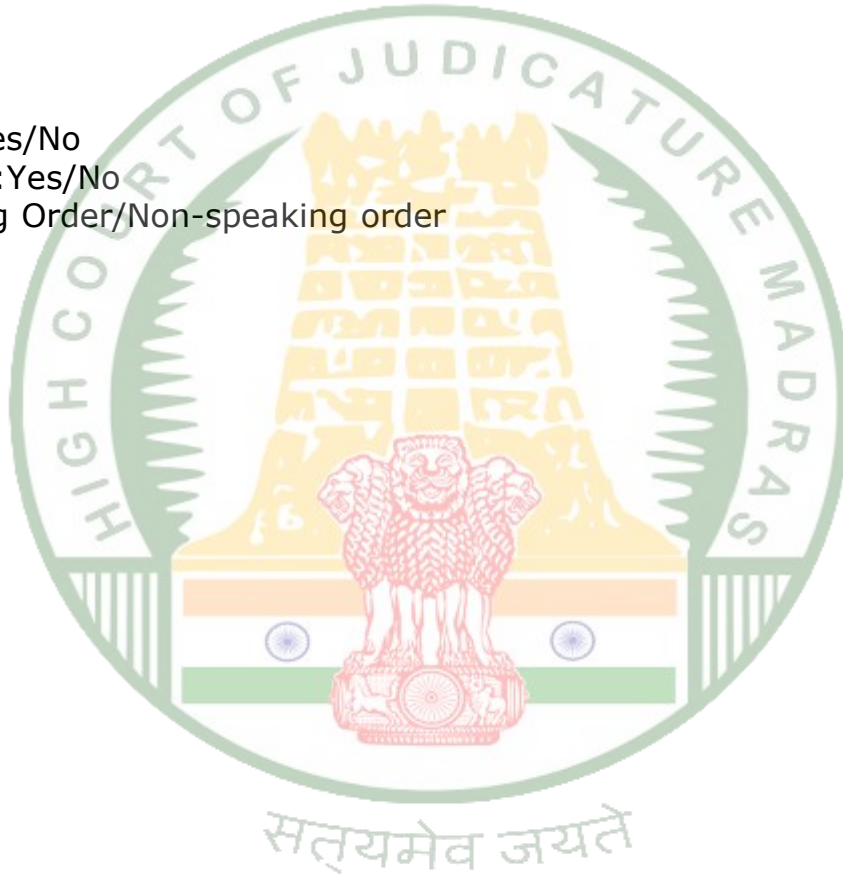
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Index:Yes/No

Internet:Yes/No

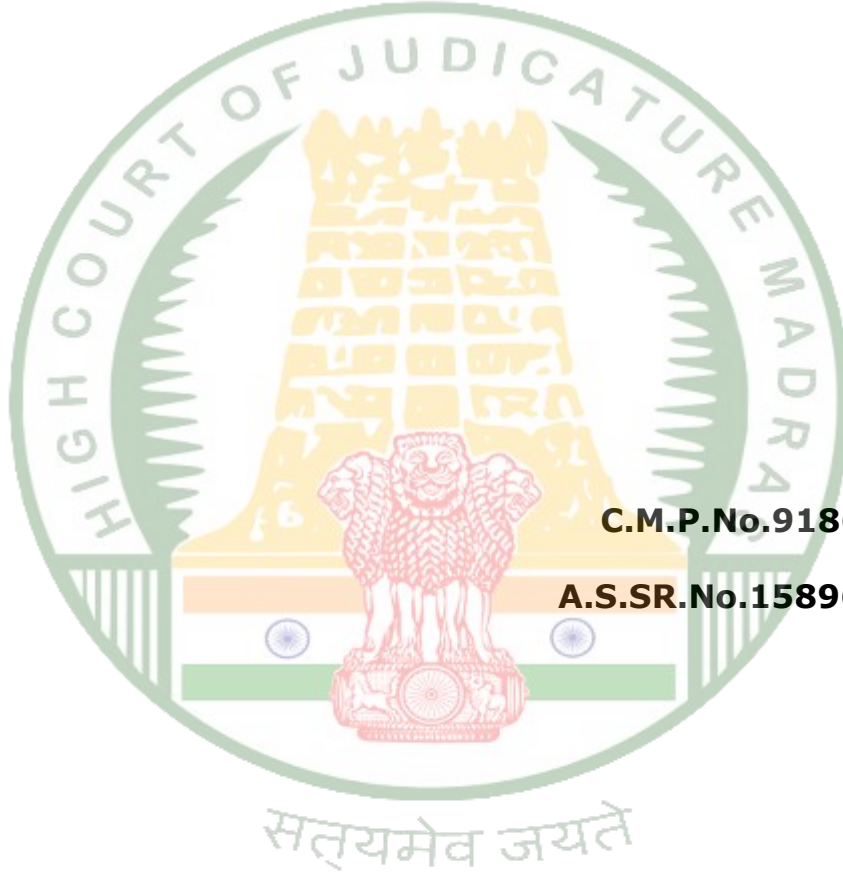
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S.M.SUBRAMANIAM, J.

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