

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.P.No.15297 of 2019
in
A.S.SR.No.12054 of 2018

Subbulakshmi ..Appellant

Vs.

R.V.Ravi .. Respondent

PRAYER: Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 275 days in filing the first appeal.

For Petitioner : Mr.M.V.Krishnan

For Respondent : Mr.R.Karthik

ORDER

The miscellaneous petition is filed to condone the delay of 275 days in filing the first appeal challenging the judgment and decree passed in O.S.No.30 of 2015.

2. The suit is for specific performance and the suit was decreed in favour of the plaintiff/respondent. Thus, the appellant has chosen to

prefer the first appeal. The reason stated for condoning the delay of 275 days is that the petitioner had applied for Certified Copies of the judgment and decree in O.S.No.30 of 2015, and he came to understand that the copies were received by his counsel on 26.04.2017. However, the petitioner could not able to meet his counsel and he met his counsel only on December 2017. The petitioner was bedridden suffering from jaundice and heart trouble. Besides, she had to help in running the family business called Siva Transport.

3. In this regard, the learned counsel appearing on behalf of the respondent disputed the contention by stating that she is self-contradictory. On the one hand, the petitioner states that she could not able to meet his counsel and was suffering from jaundice and heart trouble. On the other hand, the petitioner states that she had to help in running the family business called Siva Transport. In paragraph No.6 of the affidavit filed in support of miscellaneous petition, it is stated that the property is very valuable and will fetch at-least Rs.20 lakhs. The said assessment was made, at the time of filing of an affidavit, in June 2019.

4. The learned counsel for the respondent states that the trial Court itself directed the respondent to enhance the sale consideration and he has already deposited Rs.16.5 lakhs, out of total sale consideration to the petitioner. Therefore, no prejudice would be caused for the petitioner.

5. May that it be, this Court is of the opinion that the appeal suit is filed with a delay of 275 days. The suit is for specific performance. The reason stated is flimsy and to substantiate the reason, no document has been filed. The petitioner has stated that she was suffering from jaundice and heart trouble and further, stated that she had to help in running the family business called Siva Transport. Thus the reasons are self-contradictory and not candid.

6. This Court is of the opinion that even on merits, the learned counsel for the respondent made a submission that as per the petitioner, the value of the property on June 2019 is Rs.20 lakhs, as the Trial Court had already considered the case of the petitioner and directed the respondent to pay a sum of Rs.16.5 lakhs to the petitioner and the said amount had already been deposited on 17.07.2017 itself.

Considering these factors, this Court is of the opinion that the condonation of delay deserves no merit consideration.

7. Law of Limitation being a substantive law, the Courts are bound to follow the principles, while condoning the delay, which is otherwise enormous. Huge delay cannot be condoned in a routine manner by the Courts. Courts have to exercise the discretionary powers judiciously and cautiously and in the event of exercising the discretionary power to condone the enormous delay, then the reasons must be recorded. In the absence of any acceptable reasons, huge delay cannot be condoned at all. Law of limitation being a substantive law, the rule is to file appeals in time. Condoning the delay by exercising a discretionary power is an exception. Thus, the exception cannot be made as a rule as if the delay in huge can be condoned in a routine manner. This being the basic principles to be adopted by the Courts for the purpose of condoning the huge delay, this Court is of an opinion that the delay of 275 days, which is improperly explained is to be construed as an uncondonable delay.

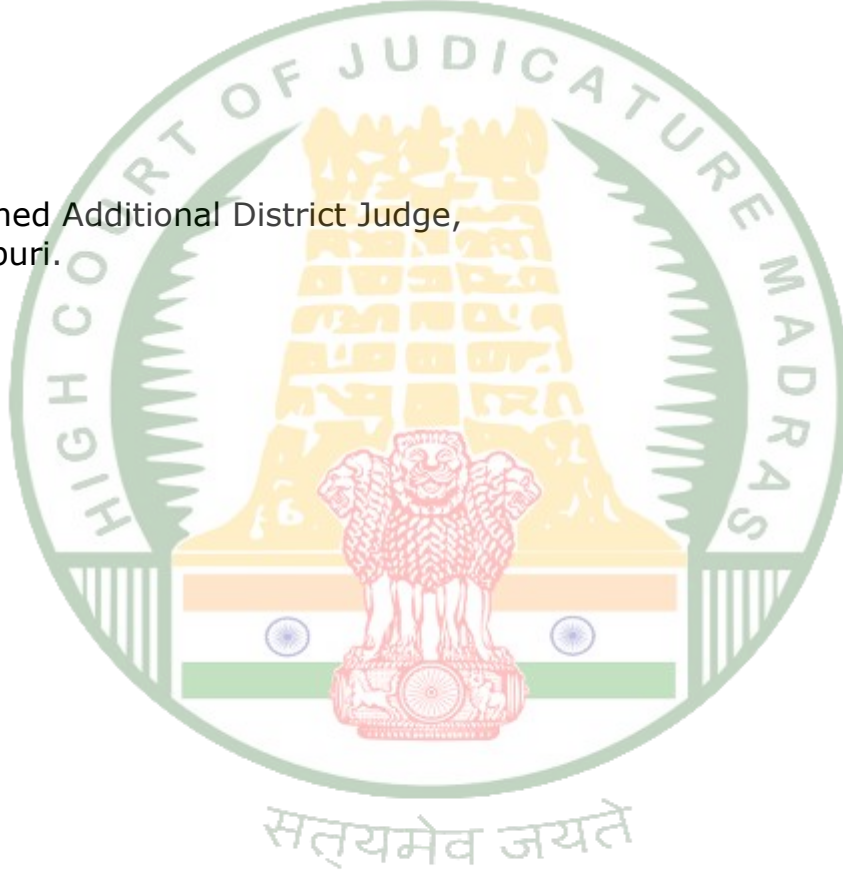
8. In view of the reasons stated in the accompanying affidavit filed in support of the miscellaneous petition, this Court is not inclined

to consider the civil miscellaneous petition. Accordingly, the civil miscellaneous petition stands dismissed and A.S.SR.No.12054 of 2018 stands rejected. No costs.

27.01.2020

ssb

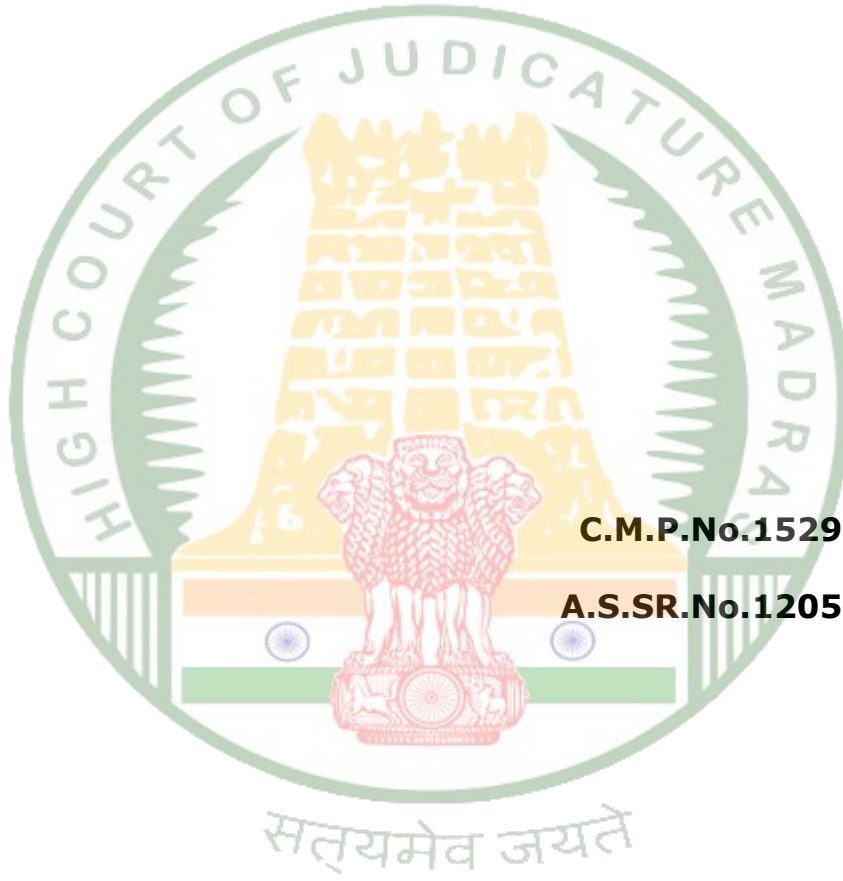
To
The learned Additional District Judge,
Dharmapuri.



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S.M.SUBRAMANIAM, J.

ssb



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