

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.P.No.26502 of 2019
in
SA.SR.No.145809 of 2019

Saraswathi

..Appellant/Petitioner

Vs.

1.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

2.The Tahsilar, Mylapore,
Triplicane Taluk,
Mylapore, Chennai - 28.

3.Padmavathi

4.Jagadalaprathban

..Respondents/Respondents

Prayer: Memorandum of Civil Miscellaneous Petition filed under Order 41 Rule 3 (A) read with order 42 Rule 1 of CPC filed to condone the delay of 2114 days in filing the above second appeal.

For Appellant : Mr. R.Abdul Mubeen

For Respondents : M/s.P.Jayaprakasam for R3 & R4
M/s.S.Prabhu for R1

SA SR: The Second Appeal filed under Section 100 of CPC, against the Judgment and decree of the IV Additional Judge, City Civil Court, Chennai, dated in AS.220/2011, against the XV Assistant Judge, City Civil Court, Chennai dated 22/7/2003 in OS.No.2792/1995.

O R D E R

This application is filed seeking condonation of delay in 2114 days in filing the second appeal. According to the

petitioner, she could not file an appeal in time, because her husband was hospitalised due to diabetes and gangrene ailments. Certain medical records have also been produced by her to show that her husband suffered illness from the year 2015 till 13.02.2019 and ultimately, he died on 28.02.2019. The respondent has filed a counter affidavit stating that the appeal before the Lower Appellate Court itself was filed with a delay of 2188 days. Based on the said fact, it is contended that the appellant is in the habit of filing appeals with delay. It is also stated that the appellant had filed a writ petition in W.P.No.23095 of 2016, seeking cancellation of the ration card issued to the third respondent and fourth respondent on 30.03.2016. It is also claimed that the petitioner also filed a private criminal complaint against the respondents 3 and 4 on the file of the 23rd Metropolitan Magistrate, Saidapet during May 2016.

2. Pointing out the suppression of the above facts, the learned counsel for the respondent would contend that there is no bonafide in the claim of the petitioner. The delay being 2114 days no proper explanation has been given for condonation of such long delay. The copy of the writ petition and copy of the criminal complaint have been filed in the form of type set of papers. The criminal case has been filed during the month May of 2016. The judgment for the first appeal namely in A.S.No.220 of 2011 was delivered on 16.08.2013. This appeal came to be filed some time in the month of November 2019, the only reason that assigned for the delay is the illness of the husband of the petitioner from the year 2015 till 13.02.2019. From the counter affidavit as well as the papers produced by the respondents, it is seen that the petitioner was prosecuting other proceedings before this Court and the Criminal Court. Therefore, the petitioner is guilty of the suppression in the said proceedings in the affidavit filed seeking condonation of delay. Therefore, I do not find bonafides in the claim of the petitioner. Hence this petition is dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

Pns

To

1.The IV Additional Judge,
City Civil Court, Chennai.

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2.The XV Assistant Judge,
City Civil Court, Chennai-104.

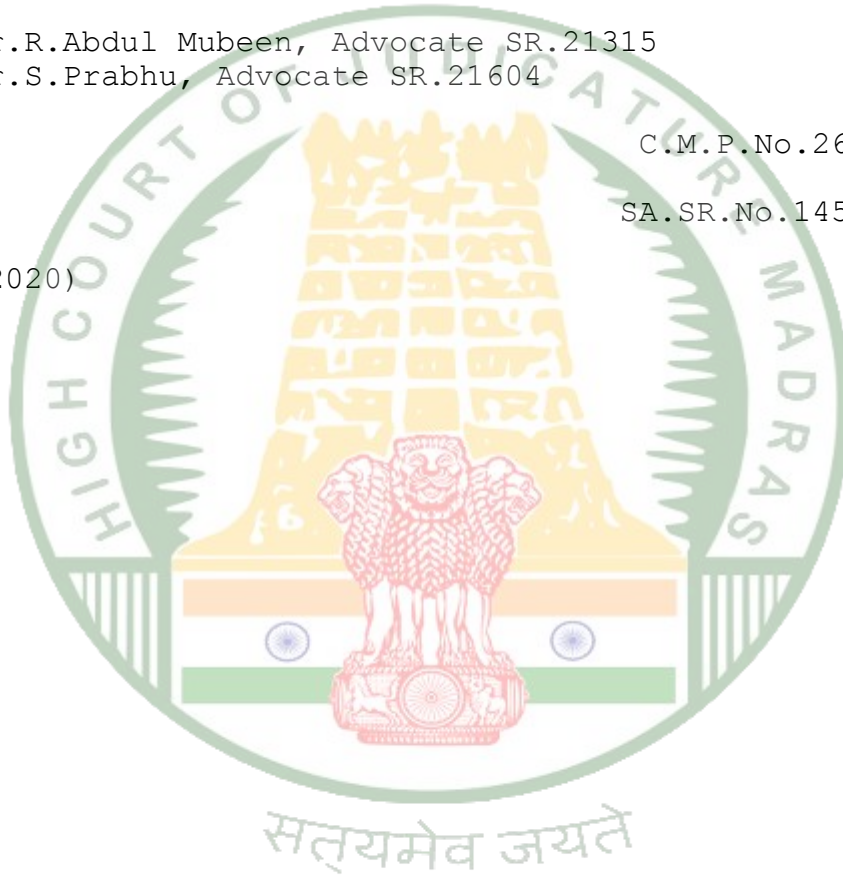
3.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

4.The Tahsilar, Mylapore,
Triplicane Taluk,
Mylapore, Chennai - 28.

+lcc to Mr.R.Abdul Mubeen, Advocate SR.21315
+lcc to Mr.S.Prabhu, Advocate SR.21604

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PVS (CO)
CB(24/09/2020)



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