



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Third day of August Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice N.SESHASAYEE

CMP(MD) No.2837 of 2019

IN

SA(MD) No.SR10198 of 2019

MOHAMED IQBAL

... PETITIONER/ APPELLANT

Vs

1 K.MOHAMED BATCHA

2 G.MILTON

3 G.EDWARD DENNISON

... RESPONDENTS/ RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 506 days in preferring this appeal and thus render justice.

PRAYER IN SA(MD) No.SR10198 of 2019:

To set aside the decree and judgment and dated 26.04.2017 passed in A.S.No.22 of 2013 by the Principal District Court, Thanjavur confirming the decree and judgment dated 16.07.2013 passed O.S.No.95 of 2006 by the Principal Sub Court, Thanjavur and decree the suit in favour of the appellant and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.SESUBALAN RAJA, Advocate for the petitioner and of MR.R.VIJAYAKUMAR, Advocate on behalf of the Respondents 2 & 3, the court made the following order:-

The plaintiff in a suit for specific performance has moved the present appeal, after suffering concurrent decrees dismissing his suit by the Courts below. In filing this appeal, there was a delay of 506 days.

2. In the affidavit filed in support of this petition, it is averred that the plaintiff was working abroad, that he could not arrive home in time to prefer the appeal. The passport entries are made available to show that out of the 506 days delay, the petitioner/plaintiff/appellant was abroad for nearly 480 days.



3. The learned counsel for the petitioner submits that technically only 26 days delay can be attributed to the petitioner. This is the period he made arrangements to file the appeal.

4. The learned counsel for the respondents opposing the prayer for condonation of delay argued that the clock does not stop ticking merely because the litigant is abroad. The plaintiff/appellant ought to have been vigilant in prompting the appeal by means that law provides him.

5. Heard both sides.

6. This Court is not a school teacher to teach discipline to the litigant but, takes a broad based view and understands the difficulties encountered by the litigant. Merely because the suit is pending that does not imply the litigant cannot travel abroad to earn a livelihood and once a person goes abroad, there will be certain constraints, which this Court can visualize. However, taking into consideration the inconvenience to which the respondents have been put to and accepting the reasons stated, this petition is allowed on the condition that the petitioner pays a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) as cost to the respondents.

7. The learned counsel for the respondents would now make a statement that out of Rs.7,500/-, which the Court has now awarded as cost, Rs.2,500/- (Rupees Two Thousand and Five hundred only) may be directed to be paid to the Advocate Clerks Association attached to the Madurai Bench of Madras High Court.

8. His gesture is appreciated.

9. Accordingly, this petition is allowed on condition that the petitioner pays a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) to the Advocate Clerks Association attached to the Madurai Bench of Madras High Court and a sum of Rs.5,000/- (Rupees Five thousand only) to the respondents within a period of 15 days from the date of receipt of a copy of this order.

10. The Registry is directed to number the appeal, if the papers are otherwise in order and post the appeal for admission.

sd/-
03/08/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE JUDGE,
PRINCIPAL DISTRICT COURT, THANJAVUR.

2 THE JUDGE,
PRINCIPAL SUB COURT, THANJAVUR.

COPY TO:

THE OFFICER INCHARGE,
ADVOCATE CLERK'S WELFARE ASSOCIATION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI-625 023.

ORDER

IN

CMP (MD) No.2837 of 2019

IN

SA(MD) No.SR10198 of 2019

Date :03/08/2020

TSG-2/CM

JM/VR/SAR 2/07.08.2020/3P/4C