



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

Thursday, the Thirteenth day of August Two Thousand Twenty
PRESENT

The Hon`ble Mr.Justice N.SESHASAYEE

**C.M.P. (MD)No.7351 of 2019
in S.A(MD) SR.No.56799 of 2019**

THE COMMISSIONER,
KARAIKUDI MUNICIPALITY, KARAIKUDI.

... PETITIONER/APPELLANT

Vs

RM CHOCKALINGAM
S/O.RAMANATHAN
NO.237,SEKKALAI ROAD, KARAIKUDI TALUK,
SIVAGANGAI DISTRICT
REP.BY POWER AGENT KUMAR,
S/O.SANKARANARAYANAN,
NO.95,KAMAN PANDIGAL KOIL STREET,
KARAIKUDI, KARAIKUDI TALUK,
SIVAGANGAI DISTRICT.

... 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 2416 days in filing the above Second Appeal against the Judgment and Decree dated 18.1.2011 made in OS No.188 of 2005 on the file of learned Principal District Munsif Court-cum-Judicial Magistrate, Karaikudi and as confirmed by the judgment and decree dated 3.8.2012 made in AS No.51 of 2011 on the file of Sub Court, Devakottai.

PRAYER in S.A(MD) SR.No.56799 of 2019:

To prefer this Memorandum of Grounds of Second Appeal against the judgment and decree dated 03.08.2012 made in AS No.51 of 2011 on the file of Sub Court, Devakottai, confirming the judgment and decree dated 18.01.2011 made in OS No.188 of 2005 on the file of Principal District Munsif cum Judicial Magistrate, Karaikudi.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.P.MAHENDRAN, Advocate for the petitioner and of Mr.S.SRINIVASARAGHAVAN, Advocate on behalf of the Respondent, the court made the following order:-

The petitioner herein is the Commissioner, Karaikudi Municipality. The respondent herein has laid a suit in O.S.No.188 of 2005 for a mandatory injunction against the Municipality.



2. According to the respondent/plaintiff, he is the absolute owner of the property, whereas, according to the Municipality, the suit property was allotted for a public purpose, and now a municipal park is being formed therein. The suit came to be decreed on 18.01.2011. Challenging the said decree, the Municipality had preferred an appeal in A.S.No.51 of 2011 before the Sub Court, Devakottai. The appeal came to be dismissed on 03.08.2012.

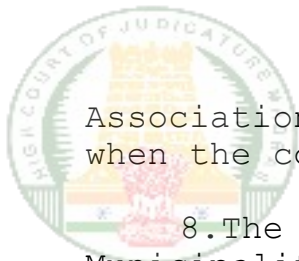
3. While so, the present second appeal was not filed in time and in terms of the affidavit of the Commissioner of Municipality filed in support of the petition, necessary arrangements were made by the Municipality through its staff to obtain the certified copies in time. However, due to certain personal crisis, the concerned staff did not report for duty and they were under the impression that the copy application had been filed. In the meantime, due to transfer, promotion and retirement of various officials of the Municipality, it was omitted to be noticed that the copy application was not filed. Once it was found, immediately, necessary copy application was filed. However, in the process, a delay of 2416 days has intervened and this is required to be condoned.

4. In the counter filed by the respondent it is stated that the delay in filing the appeal is more than 7 years and the reasons stated for condoning the delay is straight out of fiction.

5. Heard, both sides. Both sides stuck to their respective positions as disclosed in their respective affidavits or the counter affidavit, as the case may be.

6. While law on limitation for preferring an appeal remains the same for the citizen and for the instrumentalities of the State, this Court repeatedly witnesses that the responsibility required on the part of the instrumentalities of the state is abysmally low in meeting the time line defined by Limitation Act. While the Court is not required to see the merit of the cause while condoning the delay, in situations where public interest is involved the same cannot be overlooked either. So far as the present case is concerned, the case of the petitioner / Municipality is that the property in dispute is allotted for public purpose and a municipal park is being constructed for the benefit of the general public. This public interest needs to be accommodated. Hence, this Court chooses to condone the delay of 2416 days. However, this cannot go without pain, and this Court directs the petitioner/appellant to pay a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondent.

7. At this juncture, the learned counsel for the respondent submitted that a sum of Rs.5,000/- (Rupees Five Thousand only) may be directed to be paid to the credit of the Advocate Clerks Association attached to Madurai Bench of Madras High Court. He submitted that he himself would pay the same to the Advocate Clerks



Association attached to Madurai Bench of Madras High Court as and when the cost amount is paid to him.

8.The learned counsel for the petitioner submitted that the Municipality can issue a Demand Draft to the learned counsel for the respondent on or before 21.08.2020.

9.In fine, this petition is allowed on condition that the petitioner pays a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as cost to the respondent by Demand Draft on or before 21.08.2020. As and when the cost is paid, the learned counsel for the respondent is required to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the Advocate Clerks Association attached to Madurai Bench of Madras High Court.

10.Post the matter on 31.08.2020 for reporting compliance.

sd/-

13/08/2020

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/ /2020

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE SUBORDINATE JUDGE, DEVAKOTTAI.

2 THE PRINCIPAL DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
KARAIKUDI.

COPY TO:

THE OFFICER INCHARGE,
ADVOCATE CLERKS ASSOCIATION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CMP(MD) No.7351 of 2019

in S.A(MD) SR.No.56799 of 2019

Date :13/08/2020

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AE/JC/SAR-III (17.08.2020) 3P 4C

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