



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.P. (MD)No.413 of 2018
in S.A. (MD)SR.No.58348 of 2014

S.Dhandapani

... Petitioner/Appellant

Vs.

1.K.Malathi

2.Somasundaram

... Respondents/Respondents

Prayer in C.M.P. (MD)No.413 of 2018 : Petition filed under Order IV Rule 9(A) of A.S.Rules praying to condone the delay of 1044 days in representing the above second appeal S.R.No.58348 of 2014.

Prayer in S.A. (MD)No.SR 58348 of 2014: Appeal filed under Section 100 of Civil Procedure Code against the decree and judgment passed by the Principal District Judge, Dindigul on 28.08.2014 in A.S.No.37 of 2007, confirming the Decree and Judgement passed by the Subordinate Judge, Palani in O.S.No.315 of 1998 on 12.01.2007.

For Petitioner : Mr.S.Madhavan

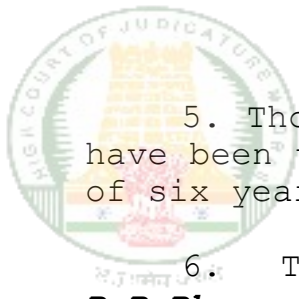
ORDER

This Miscellaneous Petition has been filed seeking to condone the delay of 1044 days in representing the above Second Appeal.

2. The reason stated by the petitioner is that the above second appeal was filed on 23.12.2014 and the same was returned for certain compliances and thereafter, the appeal papers were mixed up with the other bundles and therefore, there had occurred a delay of 1044 days in representing the Second Appeal.

3. I have considered the submissions made by the learned counsel appearing for the petitioner and I have also perused the materials available on record.

4. The petitioner mainly contended that due to the reasons stated above, the delay of 1044 days had occurred and it is neither wilful nor wanton.



5. Though the appeal has been filed in the year 2014, no steps have been taken to serve notice to the respondents even for a period of six years, and therefore, such a huge delay cannot be condoned.

6. The Honourable Supreme Court in **R.B.Ramlingam v. R.B.Bhuvaneswari** reported in **2009(2) SCALE 108**, has considered the delay of 568 days in filing the Special Leave Petition and observed as follows:

"3. ... Reading the said judgment, it also becomes clear that filing of Review Petition is no impediment to the filing of the special leave petition. Large number of judgments were cited before us by learned counsel. It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of Limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.

4. For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition."

7. In **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation** reported in **(2010) 5 Supreme Court Cases 459**, the Honourable Supreme Court considered the inordinate delay on the part of the State Corporation in filing the appeal and observed as follows:

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the



same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate—*Collector (L.A.) v. Katiji* [(1987) 2 SCC 107 : AIR 1987 SC 1353], *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123 : JT (1998) 6 SC 242] and *Vedabai v. Shantaram Baburao Patil* [(2001) 9 SCC 106]."

8. Though the expression "sufficient cause" should receive a liberal consideration, each case is to be decided on the facts and this Court is of the view that in the absence of proper and sufficient reasons, the delay of 1044 days in representing the Second Appeal cannot be condoned.

9. In the result, this Miscellaneous Petition is dismissed. Consequently, S.A(MD)SR.No.58348 of 2014 is rejected. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

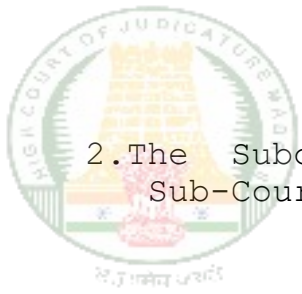
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Note:

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 responsibility of the advocate/litigant concerned.

To

1.The Principal District Judge,
Principal District Court, Dindigul .



2.The Subordinate Judge,
Sub-Court, Palani.

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