



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

Friday, the Twenty First day of February Two Thousand Twenty

PRESENT

**The Hon`ble Mr.Justice N.SATHISH KUMAR**

CMP(MD) Nos.8777,10482 of 2017 and 8252 of 2018  
IN  
SA No.324 of 1996

KARUPPASAMY

... PETITIONER/APELLANT  
IN CMP(MD)No.8777 of 2017  
... PETITIONER/PETITIONER/APELLANT  
IN CMP(MD)No.10482 of 2017 and  
CMP(MD)NO.8252 of 2018

Vs

1 PANJA THEVAR  
2 SHAMUGASUNDARAM PILLAI  
3 KANNAN  
4 SUNDARARAJAN

... RESPONDENTS/RESPONDENTS  
IN CMP(MD)No.8777 of 2017  
... RESPONDENTS/RESPONDENTS/RESPONDENTS  
IN CMP(MD)No.10482 of 2017 and  
CMP(MD)NO.8252 of 2018

**PRAYER IN CMP(MD)No.8777 of 2017 :**

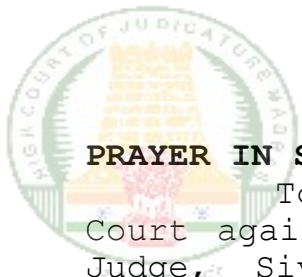
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 1784 days in filing the restoration petition against the order dated 24/09/2012 made in SA.No.324 of 1996.

**PRAYER IN CMP(MD)No.10482 of 2017 :**

Pleased to condone the delay of 2063 days in filing the restoration petition order passed against the 3rd and 4th respondents order dated 20.02.2012 made in S.A.No.324 of 1996 and thus render justice.

**PRAYER IN CMP(MD)No.8252 of 2018:**

Pleased to set aside the order passed by this Honourable court against the 3rd and 4th respondents order dated 20.02.2012 made in S.A.No.324 of 1996 and restore the same in the above second appeal and thus render justice.



**PRAYER IN SA.324 of 1996 :**

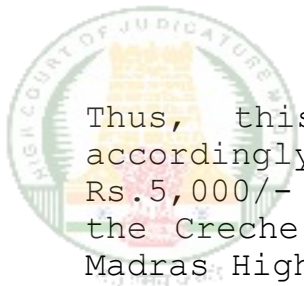
To prefer this Memorandum of Second Appeal to this Hon'ble Court against the Judgment and decree of the learned Subordinate Judge, Sivagangai, made in A.S.NO.46 of 1992 dated 6.9.1994 reversing the Judgment and decree of the learned District Munsif of Manamadurai made in O.S.NO.457/1988 and dated 9.4.1991.

**ORDER :** These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr. T.ANTONY ARUL RAJ, Advocate for the petitioner in all these petitions, and of Mr.M.MOHANASUNDARAM, Advocate for R1 in all these petitions, the court made the following order:-

These petitions have been filed to condone the delay of 1784 and 2063 days in filing the applications to restore the Second Appeal, which was dismissed for non-prosecution on 24.09.2012 and dismissed as against the third and fourth respondents on 20.02.2012 and to set aside the order dated 20.02.2012 passed against the third and fourth respondents, respectively.

2. It is averred by the petitioner that the appeal was dismissed for non-prosecution on 24.09.2012. On the date when the appeal was listed under the caption "for dismissal" for not taking steps, the counsel was engaged in another Court and hence, he was not able to appear before the Court. Immediately, he filed restoration application in C.M.P.(MD)SR.No.49496 of 2012 on 05.11.2012. However, it was returned due to some defects. In the meanwhile, due to change of office of the counsel, the returned papers were misplaced and, therefore, the same could not be re-presented in time. The same is neither wilful nor wanton. It is also submitted that there was communication gap between the counsel and the client. Hence, he prayed for allowing the petitions.

3. Having regard to the nature of suit and appeal, though the reasons assigned by the petitioner are not fully satisfactory, having regard to the factual scenarios in communicating the client, particularly, counsel on the appellate side and the clients from the Mofussil Court, this Court cannot ignore the difficulties faced by the litigants from the Mofussil areas. Sometimes, proper communication has not been sent by the lawyers and moreover, the clients are not in direct contact with the High Court Lawyers and only the High Court lawyers are engaged by the Mofussil Court lawyers. In such view of the matter, merely because some lethargic attitude by the lawyers in prosecuting the appeals, rights of the clients cannot be deprived. Nowadays, it has been practice of few lawyers in not prosecuting the appeals with diligence and not even communicating the clients properly. In such view of the matter, litigants from the rural areas cannot be allowed to suffer for the irresponsibility of the lawyers, who argue at the appellate stage.



Thus, this Court is inclined to allow the applications and accordingly, the same stand allowed, however, with cost of Rs.5,000/- [Rupees Five Thousand only] payable by the petitioner to the Creche Account, Women Advocates' Association, Madurai Bench of Madras High Court, Madurai, on or before 10.03.2020.

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4. Post the matter on 10.03.2020 '**for reporting compliance**'.

sd/-  
21/02/2020

/ TRUE COPY /

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

TO

1.THE SUBORDINATE JUDGE, SIVAGANGAI.

2.THE DISTRICT MUNSIF, MANAMADURAI.

**COPY TO:**

THE OFFICER INCHARGE,  
THE CRECHE ACCOUNT,  
WOMEN ADVOCATES' ASSOCIATION,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CMP(MD) Nos.8777,10482 of  
2017 and 8252 of 2018 IN  
SA No.324 of 1996  
Date :21/02/2020

SML

TK/PN/SAR.3/26.02.2020/3P/4C