

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19-01-2021

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMP No.12721 of 2016
in
CMSA SR No.98997 of 2015

S.Loganathan

.. Petitioner/Appellant

VS.

1.R.Venkatesan
2.Sorna Gandhi
3.S.Kannan
4.Kiruthika

.. Respondents/Respondents

PRAYER: **CMP No.12721 of 2016** is filed under Order 41, Rule 3A r/w Order 42 Rule 1 of CPC to condone the delay of 358 days in filing the above Civil Miscellaneous Second Appeal.

For Petitioner : Mr.C.R.Prasanan

For Respondents : No Appearance

ORDER

The reasons stated for the delay are narrated in paragraph-5 of the affidavit filed in support of the miscellaneous petition, which reads as under:-

“5. After the judgment was delivered the Senior Counsel Mr.Myilswamy appeared for me called me and told me that he was aged and he was unable to look after any case or track the copy application filed by him. I have engaged another counsel during November 2014 and I was not able to know the fate of the copy application or about the orders passed by the Appellate Court. The records were also not returned by the Appellate Court. On 28.04.2015 when the E.P., was posted I have received copies of the judgment and decree from the office of the Senior Counsel. During that time, this Hon'ble Court was closed for summer vacation. In the first week of June 2015, a Junior Counsel belonging to a office of Senior Counsel filed change of vakalath. Subsequently, he told me that he would only appear in the execution petition and take adjournments till I make arrangements to file an appeal. However, Senior Counsel died on

23.06.2015. I therefore, wanted guidance from another Advocate at Coimbatore. He perused the judgment and decree in I.A.No.35 of 2011 and also the judgment and decree passed in C.M.A.No.9 of 2012 and felt that a review petition could be filed before the Execution Court itself. In the second week of July, the said counsel told me that the review is not possible and he advised me to take the matter by way of a C.M.S.A before this Hon'ble Court, during the first week of August, 2015. He also directed me to get the pleadings so that the same are necessary for filing the Civil Miscellaneous Appeal. I went back to the office of the Senior Counsel who originally appeared for me through his junior and I was not able to get the copies of the original pleadings and bundle from the Advocate's office. However, during the last week of October 2015, I got the necessary papers from the office of the said counsel. I was also made to understand that I had to visit Chennai in person and explain the aforesaid things to my counsel at Chennai. During the second week of November 2015, there was a heavy rain in Chennai. I was not able to proceed to Chennai.

However, on I went to Chennai on 26.11.2015 and handed over the papers to my counsel. My Counsel prepared the Civil Miscellaneous Appeal and filed it on 30.11.2015. However I was given to understand that there is a delay of 358 days in filing the above Civil Miscellaneous Second Appeal. The aforesaid delay is neither willful nor wanton but due to the aforesaid bonafide reasons. Interest of justice requires that the delay of 358 days in filing the above Civil Miscellaneous Second Appeal be condoned as otherwise I will be put to irreparable loss, hardship and damage. I have a good case on merits. The Courts below erred in overlooking that the respondent did not file the original will before the Court to show that his vendor namely Saraswathi got title."

2. On account of the sudden death of the Senior Counsel Mr.Myilswamy, the petitioner was unable to make suitable arrangements to pursue the matter. The sequences are well narrated and therefore, this Court is convinced with the reasons furnished for condoning the delay.

3. Accordingly, the delay of 358 days in filing the above Civil Miscellaneous Second Appeal stands condoned and consequently, CMP No.12721 of 2016 in CMSA SR No.98997 of 2015 stands allowed.

19-01-2021

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

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Note: Registry is directed to number the appeal,
if it is otherwise in order and post the matter for admission.



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S.M.SUBRAMANIAM, J.

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