



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Tuesday, the Seventeenth day of August Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE ABDUL QUDDHOSE

CMP No.8718 of 2016

in SA.No.352 of 2004

1 PARAS KAVAR BAFNA (DECEASED) [PETITIONERS]
W/O.PUKHRAJ BAFNA

2 PRASANT CHAND BAFNA

Vs

1 BABU [RESPONDENTS]

2 M.G.BASKARAN

3 RAJI

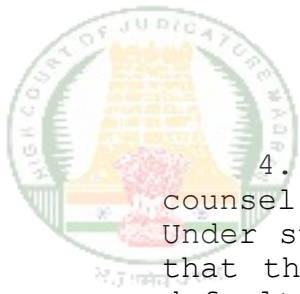
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 811 of filing the petition to set aside the order of dismissal dated 09.12.2013 in S.A.No.352 of 2004 and thus render justice [in CMP No.8718/2016].

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.M.BASKAR, Advocate for the petitioners and of MR.T.KARUNAKARAN for Respondents, the court made the following order:-

This petition has been filed to condone the delay of 811 days in filing the petition to restore the Second Appeal, which was dismissed for default on 09.12.2013.

2. Heard Mr.M.Baskar, learned counsel for the petitioners / appellants and Mr.T.Karunakaran, learned counsel for the respondents.

3. The reason given in the affidavit is that the earlier counsel on record for the appellants had left India after quitting practice and therefore, the petitioners / appellants were unable to contact him.



4. It is further stated in the affidavit that the earlier counsel on record for the appellants has settled in Australia. Under such circumstances, the petitioners / appellants have alleged that they were not aware that the Second Appeal was dismissed for default on 09.12.2013. Therefore, they are seeking for condonation of delay of 811 days in filing this application to restore the Second Appeal which was dismissed for default on 9. 12.2013.

5. A counter affidavit has been filed by all the respondents denying the allegations of the petitioners / appellants. They have stated that several opportunities were granted to the petitioners / appellants and on several occasions, the Second Appeal remain unrepresented in the year 2013-2014. Further, it is stated that the 1st appellant(mother) died as early as on 07.08.2009 and no steps have been taken to bring on record the Legal Representatives of the deceased 1st appellant, till date. It is also stated that it is not known whether the 1st appellant has left behind any other legal heirs apart from the petitioners / appellants herein. According to the respondents, no sufficient reason has been given by the petitioners /appellants for the inordinate delay in filing this application.

6. This Court after giving due consideration to the averments contained in the affidavit filed in support of CMP No.8718 of 2016 as well as the counter affidavit filed by the respondents is of the considered view that no useful purpose will be served if the condone delay is dismissed at this stage. Admittedly, a new counsel has filed vakalat in place of the erstwhile counsel. It is the case of the petitioners that the erstwhile counsel had quit practice and he is now settled down in Australia and only due to the said reason, the petitioners / appellants were unable to contact him. It is also stated that only due to the said fact, they were not aware that the Second Appeal was dismissed for default on 09.12.2013. In that process, according to them, the delay arose, which is neither wilful nor wanton but solely due to the reasons stated above.

7. Even though the respondents have vehemently opposed for allowing of this petition, this Court is of the considered view that it will be in the interest of both the parties for getting a proper adjudication in the main Second Appeal instead of getting any orders from this Court in this petition.

8. Without going into the allegations and counter allegations made by the respective parties in this CMP, this Court allows CMP No.8718 of 2016 filed to condone the delay of 811 days in filing an application to restore the Second Appeal, which was dismissed for default on 09.12.2013 subject to the condition that the petitioner pays a costs of Rs.5,000/- (Rupees five thousand only) to Mr.T.Karunakaran, learned counsel for the respondents on or before 31.08.2021. In case of failure to pay the aforesaid sum on or before the stipulated period, this petition, shall stand automatically dismissed.



9. Only on payment of such costs and production of proof thereof, Registry is directed to number the petition filed to restore the Second Appeal, which was dismissed for default on 09.12.2013 and list the same for hearing on 06.09.2021.

WEB COPY

10. The learned counsel for the appellants is directed to serve copies of papers on the learned counsel for the respondents.

-sd/-

17/08/2021

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT MUNSIF,
POONAMALLEE.

2 THE ADDITIONAL DISTRICT JUDGE,
CUM-FAST- TRACK COURT NO.III,
CHENGLEPUT AT POONAMALEE.

COPY TO

3 MR.KARUNAKARAN,
ADVOCATE, HIGH COURT,
CHENNAI 104.

Order

in

CMP No.8718 of 2016
in SA.No.352 of 2004

Date :17/08/2021

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RA 25/08/2021