



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P(MD)No.1842 of 2021 in
C.R.P(MD)SR.No.38947 of 2016

Azhagarsamy

... Petitioner/Petitioner

Vs.

Mariyappan(died)

1.Amutha

2.Minor Prajith Kannan

(Rep. through his Mother and Natural guardian, Amutha)

3.Udayam

... Respondents/Respondents

Prayer in C.M.P(MD)No.1842 of 2021: This petition is filed under Order IV 9(4) of the Appellate Side Rules, to condone the delay of 1495 days in representing the CRP.(MD)SR.No.38947 of 2016.

Prayer in C.R.P(MD).SR.No.38947 of 2016: This Civil Miscellaneous Appeal is filed under Article 227 of the Constitution of India, to call for the records from learned Principal District Munsif Court, Tenkasi in I.A.No.155 of 2015 in O.S.No.478 of 2012 order dated 06.11.2015 and set aside the same.

For Petitioner : Mr.A.Haja Mohideen

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 1495 days in re-presenting the above appeal.

2.The learned counsel appearing for the petitioner would submit that the respondents herein filed a suit for declaration and recovery of possession of schedule item-2 of suit property against the petitioner in O.S.No.478 of 2012 on the file of the Principal District Munsif Court, Tenkasi. Subsequently, after delay of three years, without proper specific pleadings, the respondents filed an application under order 17 Rule 16 for amendment in the plaint seeking relief of mandatory injunction on 28.01.2015 and the same was allowed on 06.11.2015. Challenging the same, I have preferred the present revision with 1495 days delay.

3.As regards delay, the learned counsel for the petitioner would submit that the papers were misplaced in the office of Advocate and thereafter, lock-down was ordered. Thus, there was 1495 days delay occurred. The said delay is neither wilful nor wanton and the petitioner has good grounds on merits. Thus, he would pray to condone the delay.



4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.Due to the reasons stated in the affidavit, there was a delay of 1495 days in re-presenting the revision. Gross negligence on the part of the counsel or the litigant has to be taken note of while considering the delay.

6.It is seen that no acceptable reason has been adduced for condoning the huge delay of 1495 days in re-presenting the above revision. Therefore, this Court is not inclined to condone the delay of 1495 days in re-presenting the revision. By applying the principles laid down in the Judgment reported in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others, [2013 (5) CTC 547 (SC) : 2013 (5) LW 20]**, this Court is not inclined to condone the delay of 1495 days in re-presenting the above revision.

7.Accordingly, this petition is dismissed. In view of the order passed in CMP(MD)No.1842 of 2021, the connected C.R.P.(MD) SR.No.38947 of 2016 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

GNS

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 Principal District Munsif Court, Tenkasi.

2. The Sub Assistant Registrar,
A.E.Section,
Madurai Bench of Madras High Court, Madurai.

Order made in
C.M.P(MD)No.1842 of 2021 in
C.R.P(MD) .SR.No.38947 of 2016
02.03.2021

SMV (CO)

SRS (17/03/2021) 2P : 3C

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