



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2021

Pronounced on : 11.02.2021

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Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.M.P. (MD) No.7490 of 2020

in

Review Application (MD) SR.No.86212 of 2019

Jainulabuddin,
S/o.M.L.Haji Mohammed Yousus,
No.9, Viralimalai Road,
Manapparai.

... Petitioner

/versus/

1. The Idol of Sir Vinayagar at Sevallur,
Rep. by the Executive Officer,
Sri Nallandavar Temple, Manapparai.

2. Asharabibi,
3. M.K.M.Sahabuddin,
4. Rahimunnissa,
5. The Kalaivani Health and Education Trust,
A registered No.RCD No.976 of 2000
Rep. by its President V.S.Chidambaram,
Having its Office at Door No.42A,
Viralimalai Road,
Manapparai.

6. The Kalaivani Matriculation School,
Rep. by its Correspondent V.S.Chidambaram,
Having its Office at Door No.9, Viralimalai Road,
Manapparai.

7. Pandiyarajan,
S/o.Narayanasami Reddiar,
No.100, Jeeva Nagar,
Manapparai.

... Respondents

Prayer: Civil Miscellaneous Petition is filed under Section 5 of Limitation Act, to condone the delay of 374 days in filing the above Review Petition.



Prayer in Review Petition Sr.No.86212 of 2019:

This Review Petition filed Under Section 114 of CPC, R/w order 47 Rule 1 of CPC, praying this Court to review the order of this Hon'ble Court dated 01.11.2018 made in CMP(MD).SR. No.10366 of 2018 in SA(MD).Sr.No.39012 of 2016.

Prayer in CMP(MD)No.10366 of 2018:-

Civil Miscellaneous Petition is filed Under order 22, Rule 3 U/s. 151 CPC, to condone the delay of 720 days in respecting the Second Appeal in SR No.39012 of 2016.

Prayer in SA(MD)Sr.No.39012 of 2016:-

Second Appeal is filed Under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 28.04.2016 passed in AS.No.71 of 2011 by the Second Additional Sub Court, Tiruchirappalli, reversing the judgment and decree dated 19.11.2010 passed in O.S.No.29 of 2005 on the file of the District Munsif Court, Manapparai.

For Petitioner : Mr.A.Arumugam
for M/s.Ajmal Associates

O R D E R

(The case has been heard through video conference)

This Civil Miscellaneous Petition is to condone delay of 374 days in filing the petition to review the dismissal order passed by this Court on 01.11.2018 in C.M.P.(MD).No.10366 of 2018, to condone delay of 720 days in representing the Second Appeal preferred against the concurrent findings of the Courts below, holding the petitioner herein a trespasser into the suit land and the plaintiff is entitled for recovery of possession.

2. In the first affidavit filed along with petition, it was stated that due to communication gap between the petitioner and his counsel at Delhi, who preferred S.L.P against the order, now sought to be reviewed and due to delay in mobilisation of fund the delay occurred. Since the said reasoning was not a sufficient cause to condone delay, this Court was about to dismiss the petition. Then, the learned counsel for the petitioner sought time to file a better affidavit. Hence, time was granted to file additional affidavit.

The reason for delay is explained in paragraph Nos.3 and 4 of the additional affidavit which reads as below:-

"3. I respectfully state that I preferred the special leave petition before the Hon'ble Supreme Court in Special Leave Petition (Civil)...Diary No.14010 of 2019 and the Hon'ble Apex Court dismissed my special leave petition on 19.07.2019



in single line order that "the special leave petition is dismissed." Therefore the review application is maintainable and the doctrine of merger does not arise. If the Hon'ble Apex Court passes an order on merits it will be merger and in this case, my special leave petition was dismissed by the Hon'ble Apex Court by a single line order and thereafter this review application is filed after getting back the bundle and order copy from any Supreme Court advocate and I had the discussion with the present Madurai Advocate. Further I had acute shortage of funds to prefer this review petition at once. Only with great difficulty, I am able to raise funds only now. Further there was a communication gap between my Delhi Advocate and myself. Thereafter I applied the copy application before this Hon'ble Court on 13.11.2019. The judgment copy as made ready on 13.11.2019 and it was delivered on 22.11.2019 and that after getting order copy, we contacted our present advocate and he preferred and filed the review on 09.12.2020.

4. I respectfully state that, the special leave petition was filed along with certified copy of the order dated 01.11.2018 made in C.M.P. (MD).No.10366 of 2018 in S.A.(MD).No.SR39012 of 2016. In S.A.(MD).No.SR39012 of 2016 obtained under the earlier application. After dismissal of the Special Leave Petition, I filed the present review application after applying for the copy of the order dated 01.11.2018 made in C.M.P(MD). 10366 of 2018 in S.A.(MD).No.SR39012 of 2016. In S.A.(MD).No.SR 39012 of 2016. It is only a second copy application. The order obtained on the earlier occasion for filing S.L.P could not be used for the purpose of filing the present review application. Since I was given legal opinion that the said certified copy obtained earlier would not be returned to me after disposal of the special leave petition. Only thereafter I applied for certified copy once again as stated in the previous paragraph. All these facts cumulatively contributed to the delay of 374 days in filing the present review application. The delay occurred is neither willful nor wanton and only because of above said bonafide reason. Unless, the delay of 374 days in filing the above



review application is condoned by this Hon'ble Court, we will be put into great hardships and irreparable loss. On the other hand, there will be no hardship caused to the respondents. Hence, it is just and necessary to condone the delay of 374 days the above review application"

3. It is relevant and appropriate to extract the order dated 01.11.2018 sought to be reviewed: Hence extracted below:-

"6. The first defendant aggrieved by the Trial Court's Judgment has filed appeal suit in A.S.No.71 of 2011 before the Sub Court, Trichy. The first appellate Court after reappreciating the facts and law had confirmed the decree passed by the Trial Court in favour of the plaintiff.

7. The reasoning and law applied by the Courts below are in consonance to the settled legal principles. This Court is unable to see any serious substantial question of law involved to entertain the appeal.

8. While so, aggrieved by the concurrent findings, the second appeal though filed in time, but with defect. The appellant has taken 720 days to rectify the defect and represent it. The cause for delay in representation is stated as below:

"The petitioner has filed the main second appeal challenging the judgment and decree dated 28.04.2016 passed in A.S.No.71 of 2011 on the file of the II Additional Subordinate Judge, Tiruchirappalli confirming the judgment and decree dated 19.11.2010 passed in O.S.No.29 of 2005 on the file of the Court of District Munsif, Manapparai. The Second Appeal was filed on 04.10.2016 and the papers were returned on 05.10.2016 for complying with the defects pointed out in the return sheet. At the time of filing the Second Appeal, the petitioner had obtained only the judgment and decree copies of the Trial Court and the first appellate Court and with the said copies, the petitioner's counsel had preferred the Second Appeal. The petitioner's counsel had required the



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petitioner to furnish the pleadings set and deposition of witnesses and other documentary evidence. As it took some time for the petitioner to get the requisite documents from his trial lawyer, the delay had occurred in representing the Second Appeal. Further the petitioner was suffering from financial difficulties and therefore he was not in a position to immediately mobilize the funds for meeting the litigation expenses. The delay in representing the second appeal is neither willful nor wanton, but only on account of the reasons set forth above. If the representation delay is not condoned, the petitioner would be put to grave and irreparable loss. On the other hand, no prejudice would be caused to the 1st respondent, if the representation delay is condoned".

The reason stated above cannot be a cause sufficient to condone enormous delay of two years in representing papers, challenging concurrent findings of the Courts below, when the suit for possession filed in the year 2005 and decreed in the year 2011. On further appeal, the execution of the decree has been delayed for another five years. Now to prefer the appeal, the first defendant has taken two years. This will undoubtedly cause grave prejudice to the plaintiff/decreed holder. Delay in cases of this nature unless properly explained, cannot be condoned by just imposing cost. The title holder who has regained the possession through a decree of the Court will have an expectation to see the fruits of the decree at the earliest. Any person who lost the case should be vigilant in pursuing the legal remedy at the earliest. The judgment debtor cannot fall into deep slumber and wake up after two years to file petition to condone delay and offer some money as cost to keep the litigation alive. The legitimate expectation of a decree holder cannot be further deprived at the instance of the first defendant, who had been declared as trespasser by the Courts below.

9. For the reasons stated above, the petition to condone the delay of 720 days in representing



S.A. (MD).No.SR39012 of 2016 is dismissed. Consequently, connected SA(MD).No.SR39012 of 2016 is rejected at SR stage itself."

4. The petitioner wants to review the above said order on the ground that, *"Interest of justice will be served if second appeal heard on merits and a well merited second appeal need not be dismissed at the threshold itself by not condoning delay. It is unfortunate that merits of the second appeal have been gone into while dismissing the petition for condonation of delay. The second appeal contains substantial questions of law be decided, when the counsel for the petitioner is not at all called to address on the substantial question of law, any discussion on that score is beyond the scope of delay condonation application. By allowing the delay condonation application, no real prejudice will be done to other side."*

5. Nowhere the Law says the litigants can resort for condonation of delay as a matter of right. It neither forbid the Courts dismissing the condone delay petition without notice to the other side, if it is not satisfied with the cause shown to condone delay is reasonable.

6. In the instant case, the suit for recovery of possession filed in the year 2005. The said suit in O.S.No.29 of 2005 was allowed in favour of the plaintiff vide judgment and decree dated 19.11.2010. The Appeal in A.S.No.71 of 2011, on the file of the Second Additional Subordinate Court, Tiruchirappalli, was dismissed on 28.04.2016. The Second Appeal filed defectively and represented with delay of 720 days and same was dismissed on 01.11.2018 assigning the reasons which has been extracted at paragraph No.3 of this order for convenient reference. The petition to review that order is filed with delay, the reason stated by the petitioner is that, he unsuccessfully pursued S.L.P, but the Apex Court dismissed the S.L.P by one line order. In the said pursuit, there is a delay of 374 days. It is contended by the petitioner that no prejudice will be caused to the respondents if the delay is condoned, otherwise he will be deprived of his right to pursue his second appeal on merits.

7. Again this Court wants to make abundantly clear that admission of Second Appeal is not an automatic affair. Under Section 100 of C.P.C, unless there is substantial question of law involved and formulated, the Second Appeal shall not be admitted. This Court, while passing the order on 01.11.2018 now sought to be reviewed, had considered the merit of the appeal and found there is no substantial question of law involved to admit the Second Appeal. Hence, while dismissing the petition to condone the enormous delay of 720 days in representation, had passed detailed order expressing



the condonation of delay will only delay the execution of decree concurrently held against the appellant. The S.L.P filed against that order also came to be dismissed on 19.07.2019.

8. This Court is satisfied that filing the review petition with delay of 374 days is only to protract and cause prejudice to the decree holder. No reasonable cause sufficient to condone delay is made out, hence the **Civil Miscellaneous Petition is dismissed**. No order as to costs. Consequently, Rev.Aplc(MD)SR.No.86212 of 2019 is rejected.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

Bsm

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-5227[F] dated
15/02/2021)

order in
C.M.P. (MD) .No.7490 of 2020
in Review Application No.86212 of 2019
11.02.2021

se (CO)

TR(09.03.2021) 7P 2C