



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

Tuesday, the Twenty Fourth day of August Two Thousand and
Twenty One

WEB COPY

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CMP(MD) No.2335 of 2019
in
SA(MD) SR.No.20002 of 2016

ANGU

... PETITIONER/ APPELLANT

Vs

MUTHULAKSHMI

... RESPONDENT/ RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 4644 days in filing the above Second Appeal.

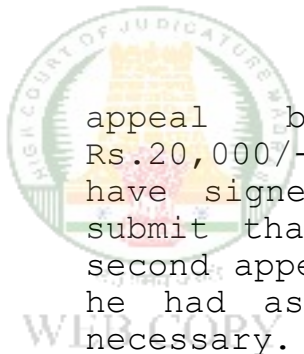
PRAYER IN SA(MD) SR.No.20002 of 2016:

To set aside the decree and judgment dated 18.10.2004 passed in A.S.No.82 of 2003 on the file of Subordinate Judge, Sivaganga confirming the decree and judgment dated 13.06.2003 in O.S.No.106 of 2002 on the file of the District Munsif, Sivaganga by allowing this Second Appeal.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.Y.PRAKASH, Advocate for the petitioner and of Mr.K.CHENGIZKHAN, Advocate on behalf of the Respondent, the court made the following order:-

This petition has been filed to condone the delay of 4644 days in filing the second appeal

2. The learned counsel appearing for the petitioner would submit that the petitioner is the plaintiff in O.S.No.106 of 2002 on the file of the District Munsif Court, Sivagangai filed for partition. The suit was dismissed on 13.06.2003 Against the judgment and decree, the petitioner had filed first appeal in A.S.No.82 of 2003 on the file of the Sub Court, Sivagangai. The appellate Court by decree and judgment dated 18.10.2004 had dismissed the appeal and confirmed the decree and judgment passed the trial Court. Thereafter the father of the petitioner entrusted the case papers to a counsel namely Mr.Kumar to file the second



appeal before this Honourable court and they have also paid Rs.20,000/- to the counsel for preferring second appeal and they have signed necessary papers. The learned counsel would further submit that the said counsel had informed that matter being a second appeal it would take considerable time for disposal and that he had assured to inform the petitioner and her father if necessary. The learned counsel would further submit that the petitioner was resident of Erode and her father was residing at Sivagangai and taking care of the legal proceedings. The petitioner's father passed away on 06.12.2014 and thereafter the petitioner and her husband had approached the counsel Mr. Kumar and informed the fact of the death of her father and to take necessary steps to bring the second appeal for hearing. Thereafter whenever the petitioner and her husband contacted the said counsel he started avoiding them and whenever particulars were sought for the said Counsel started to avoid them and thereby during the month of September 2015, the petitioner and her husband had taken a local counsellor from Sivagangai to put a word to the counsel to expedite the case herein. Only at the time the petitioner and her husband were shocked to know that the said counsel had not filed the appeal and that he had informed that he had misplaced the papers including judgment and decree of the appellate Court which was handed over to him. On advise from the wellwishers they did not proceed against the counsel and the counsel had apologised to them and had returned the fees to them. Thereafter the petitioner had sought for certified copies of judgment and decree of the appellate Court and they were able to get copies on 18.09.2015 and the appeal was filed immediately. The learned counsel would further submit that substantial rights of the parties are involved and that the petitioner is having a fair chance in succeeding the appeal and if the delay in filing the appeal is not condoned the petitioner will be put to great hardship and loss and thereby he would pray that the petition may be allowed on terms and costs.

3. The learned counsel for the respondent would submit that except the affidavit no other materials have been placed to show that the appeal was entrusted to the counsel and that only because of the negligence of the counsel, appeal was not filed in time. Knowing the fact that the advocate had been negligent the petitioner would have taken proper steps to take action against the concerned advocate, whereas it is not so. When there is no material with regard to the lapse of the counsel, the Court cannot be left to guess whether the litigant was to be blamed or his counsel has to be blamed. In this case there had been a long delay of 12 years and 72 days in filing the appeal and the petitioner has not shown any sufficient cause to condone such a long delay. He would further submit that even after filing the appeal the petitioner was lethargic and that the papers were returned by the Registry and there is further delay of 617 days in representing the appeal. When the litigant himself *prima facie* in default and negligent part of the earlier counsel also cannot come to his



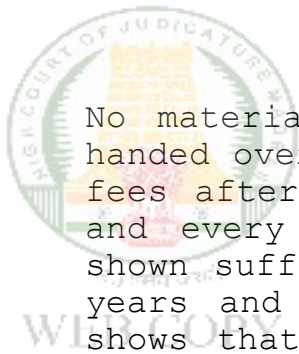
aid to establish sufficient cause for condonation of delay. In support of his contention, the learned counsel relied on the judgment of this Court in **Ramakrishnan P.K. .vs. Tamil Nadu Electricity Board** reported in **1992(2) LW 252** , wherein it has been held as follows:

WEB COPY

"9. Where a litigant engages and properly instructs a counsel to prosecute his case and does all that he expected of him to do in that behalf, he bonafide expects the counsel to act his best interest and function in a responsible manner, expected from a member belonging to the noble profession of law. If the counsel acts negligently, then generally speaking the litigant ought not to be penalised for the established negligence of the counsel unless there has been remissness on his own part as well. The counsel may, in such a case, be guilty of or not discharging his professional duties properly but his proved negligence may afford, in a given case, sufficient cause for seeking condonation of delay in prosecuting further remedies. It is, however, not possible or even desirable to lay down any hard and fast rule in that behalf. It is for the applicant to establish the facts and circumstances of the case and the court cannot be left to guess whether the litigant was to blame or his counsel. The allegations made, therefore, in that behalf must be definite and precise and they must be fully proved. However, by engaging a counsel only a party to the case is not relieved of his duties and obligations in the matter. Where a party either does not fully brief the counsel or keeps no contact with him, it is the party who is really in default and negligent and shall have to bear the consequences. Where the litigant himself is prima facie in default, the mere negligence of the counsel also cannot come to his aid in a claim or application to establish sufficient cause for condonation of delay".

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. In this case the petitioner along with her father had filed a suit for partition in O.S.No.106 of 2002 on the file of the District Munsif Court, Sivagangai and the suit was dismissed on 13.06.2003. Against the dismissal of the suit, the petitioner and her father preferred first appeal in A.S.No.82 of 2003 on the file of the Sub Court, Sivagangai and the same was dismissed on 18.10.2004. It is the further case of the petitioners that they have entrusted the case to one Advocate Mr.Kumar and he had not filed the appeal and not informed the status of the case . Only after 12 years they came to know that the appeal was not filed. In this case the petitioner has not taken any action against the concerned advocate.



No materials have been filed to substantiate that the case was handed over to the counsel and that the had returned the paper and fees after 10 years. Though it is not necessary to explain each and every day delay for condonation, the petitioner should have shown sufficient cause for condonation of such a long delay of 12 years and 72 days in filing the appeal. A perusal of the record shows that the petitioner had been lethargic and that papers were further represented after a delay of 617 days.

6. Considering the facts of the case, this Court is of the opinion that the petitioner has not shown any sufficient cause to condone the delay of 4644 days, hence the petition is liable to be dismissed.

7. In the result, the petition stands dismissed.

sd/-

24/08/2021

/ TRUE COPY /

/ /2021

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

TO

1 THE SUBORDINATE JUDGE,
SIVAGANGA.

2 THE DISTRICT MUNSIF,
SIVAGANGA.

+1CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-27265[F] dated
25/08/2021)

ORDER

IN

CMP(MD) No.2335 of 2019

in

SA(MD) SR.No.20002 of 2016

Date :24/08/2021

aav/sji

MS/VR/SAR-4/29.10.2021/4P.4C