



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

Thursday, the Twelfth day of August Two Thousand and Twenty One

PRESENT

The Hon'ble Mrs.Justice R.THARANI

C.M.P. (MD)Nos.5206 of 2021 and 3788 to 3790 of 2018
in
C.R.P. (MD)No.1289 of 2015

C.M.P. (MD)No.5206 of 2021 in C.R.P. (MD)No.1289 of 2015

1. K.S.M.JANIULABUDEEN @ KAJA MOHAIDEEN,
THROUGH HIS POWER AGENT K.S.ABDUL BARAKATH
2. K.S.M.FATHIMA NATCHI ... PETITIONERS/PETITIONERS

Vs

1. MAIKHALE FERNANDO
2. RAYAPPAN (DIED)
3. K.S.M. MOHAMMED HUSSAIN ... RESPONDENTS/RESPONDENTS

C.M.P. (MD)No.3788 to 3790 of 2018 in C.R.P. (MD)No.1289 of 2015

1. K.S.M.JANIULABUDEEN @ KAJA MOHAIDEEN,
THROUGH HIS POWER AGENT K.S.ABDUL BARAKATH
2. K.S.M.FATHIMA NATCHI ... PETITIONERS/PETITIONERS

Vs

1. MAIKHALE FERNANDO ... 1st RESPONDENT/1st RESPONDENT
2. RAYAPPAN (DIED) ... DECEASED 2nd RESPONDENT
3. K.S.M. MOHAMMED HUSSAIN ... 3rd RESPONDENT/3rd RESPONDENT
4. MARIYA KALAMAY
5. AROKIYADOSS LEYON
6. SURENDAR LEYON
7. PRASANNA LEYON
8. PREMA ... LRS OF THE DECEASED
2nd RESPONDENT/RESPONDENTS 4 to 8

PRAYER IN CMP(MD)No.5206 of 2021 in CRP(MD)No.1289 of 2015 :

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 1256 days in filing the above restoration petition.



PRAYER IN CMP(MD)No.3788 of 2018 in CRP(MD)No.1289 of 2015 :

To condone the delay of 1910 days in filing the bring on record petition in the above CRP(MD) No.1289 of 2015.

PRAYER IN CMP(MD)No.3789 of 2018 in CRP(MD)No.1289 of 2015 :

To set aside the abatement caused by death of 2nd respondent Rayappan in the above CRP (MD) No.1289 of 2015.

PRAYER IN CMP(MD)No.3790 of 2018 in CRP(MD)No.1289 of 2015 :

To bring on record the proposed respondents 4 to 8 are the respondents 4 to 8 as a legal representatives of the deceased 2nd respondent Rayappan in this appeal suit in CRP (MD) No.1289 of 2015.

PRAYER IN CRP(MD)No.1289 of 2015 :

To set aside the Judgment and Decree in I.A.No.82 of 2010 in O.S.No.87 of 2000 on the file of the Learned District Munsif cum Judicial Magistrate Court, Rameswaram dated 12.01.2011.

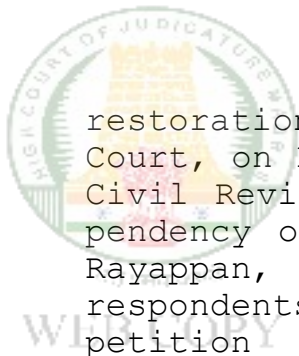
ORDER : These petitions coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.A.AJMALKHAN, Advocate for the petitioner and Mr.T.C.S.THILLAINAYAGAM, Advocate for the 1st Respondent and of Mr.P.THIAGARAJAN, Advocate for the 3rd Respondent, the court made the following order:-

These Criminal Miscellaneous Petitions have been filed (i) to condone the delay of 1256 days in filing a restoration petition.

2.On the side of the petitioners, it is stated that C.M.P.(MD) No.5206 of 2021 is filed to condone the delay of 1256 days in filing the restoration petition, to set aside the dismissal order as against the second respondent, dated 14.12.2017, made in C.R.P.(MD) No.1289 of 2015.

3.On the side of the petitioners, it is stated that a suit was filed against the third respondent and his brother in O.S.No.4 of 1998, on the file of the Sub Court, Ramanathapuram. The third respondent sold some part of the property in favour of the first respondent, on 10.03.2000. The respondents tried to change the nature of the suit property and try to create encumbrance. Hence, the petitioners filed a suit for permanent injunction in O.S.No.87 of 2000, on the file of the District Munsif cum Judicial Magistrate, Rameswaram. The petitioners filed a transfer O.P petition for transfer of the case to be tried along with O.S.No.4 of 1998 and the petitioners were not able to follow the above suit proceedings and the suit was dismissed for default on 12.06.2006.

4.Hence, the petitioners filed a restoration petition with Section 5 of Limitation Petition, in I.A.No.82 of 2010 in O.S.No.87 of 2000, for condoning the delay of 1351 days in filing the



restoration petition and that petition was dismissed by the trial Court, on 12.01.2011. Against the same, the petitioners preferred a Civil Revision Petition in C.R.P.(MD)No. 1289 of 2015. During the pendency of the revision petition, the second respondent, by name, Rayappan, died on 21.08.2012 and his legal heirs are the proposed respondents in the case. Since steps was not taken, the revision petition was dismissed on 14.12.2017 as against the second respondent. Therefore, the petitioners filed the petition C.M.P.(MD) No.3788 of 2018, to condone delay in filing a petition, to set aside the abatement by death of the second respondent and another petition in C.M.P.(MD)No.3790 of 2018, to bring on record the proposed respondents 4 to 8 as the legal representatives of the deceased second respondent / Rayappan. The petition to set aside the abatement was numbered as C.M.P.(MD)No.3789 of 2018. The petitioners have to file a petition to restore the case against the second respondent in the Civil Revision Petition. There is a delay of 1256 days in filing the restoration petition.

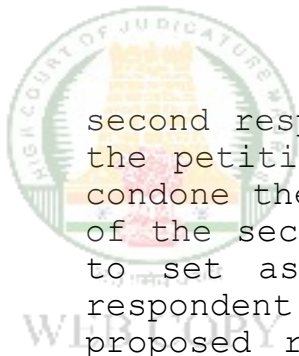
5.On the side of the petitioners, it is stated that the first petitioner is residing in Abroad and the second petitioner was not aware of the Court proceedings. During the year 2017, the petition was dismissed for non payment of Batta for the second respondent. The Advocate Clerk failed to inform the same to the counsel and there is a delay of 1256 days in filing the restoration petition.

6.On the side of the petitioners, it is stated that the first petitioner is working in Abroad and the second petitioner, being a lady, could not contact the counsel. Due to illness, she was not able to contact the counsel in time and there was a delay in filing the petition to restore C.R.P.(MD)No. 1289 of 2015 against the second respondent. If the petition is not allowed, the right of the petitioners will be infringed.

7.On the side of the respondents, it is stated that each day delay is not explained. Even the number of days of delay was not mentioned in the petition. The earlier restoration petition was dismissed and prayed the petitions to be dismissed.

8.Heard both sides.

9.A perusal of the records reveals that the suit was filed for a prayer of bare injunction and for an order not to create any encumbrance over the property. That suit was dismissed on 12.06.2006. The petitioners filed a petition in I.A.No.82 of 2010 before the District Munsif cum Judicial Magistrate, Rameswaram, for condoning the delay of 1351 days in filing a restoration petition. The delay excuse petition was dismissed by the trial Court, on 12.01.2011. Against the same, the petitioners approached this Court by way of Civil Revision Petition in C.R.P.(MD)No.1289 of 2015. In the Civil Revision Petition, since notice was not sent to the second respondent, the petition was dismissed by this Court as against the



second respondent. In the meanwhile, the second respondent died and the petitioners filed petitions (i) C.M.P.(MD)No.3788 of 2018, to condone the delay of 1910 days in bringing the legal representatives of the second respondent on record (ii) C.M.P.(MD)No.3789 of 2018, to set aside the abatement caused due the death of the second respondent, (iii) C.M.P.(MD)No.3790 of 2018, to bring on record the proposed respondents 4 to 8 as the legal representatives of the second respondent. Since the case against the second respondent was dismissed for default, the petitioners filed the present petition, in C.M.P.(MD)No.5206 of 2021, to condone the delay in filing the restore petition as against the second respondent.

10.A perusal of the records reveals that the petitioners are continuously committing delay. The revision petition is filed against the dismissal of a delay excuse petition. There is a delay excuse petition I.A.No.82 of 2010, filed before the District Munsif cum Judicial Magistrate, Rameswaram and there is another delay excuse petitions before this Court in C.M.P.(MD)No.3788 of 2018. This petition in C.M.P.(MD)No.5206 of 2021 also is for condoning the delay. Except the vague allegation that the first petitioner was working Abroad and the second petitioner was in ill, no other reason was stated in the delay excuse petition. The first petitioner was represented by his power agent, who is residing in Ramanathapuram. Hence, inability of the first petitioner to follow the case is not proved. No document was filed to prove the illness of the second petitioner. The delay is enormous. Each day delay was not explained.

11.The reasons stated in the affidavit filed in support of this petition are not satisfactory and hence, the delay excuse petitions in C.M.P.(MD)No.5206 of 2021 is dismissed and connected C.M.P.(MD) Nos.3788, 3789 and 3790 of 2018 are also dismissed.

sd/-

12/08/2021

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

TO

THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
RAMESWARAM.

ORDER IN

C.M.P.(MD)Nos.5206 of 2021 and
3788 to 3790 of 2018 in

C.R.P.(MD)No.1289 of 2015

Date :12/08/2021

USK/PN/SAR-I : 17/08/2021 : 4P/2C

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