



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.P. (MD) No.7397 of 2019

in

CRP(MD).No.SR18621 of 2018

WEB COPY

1.Sankaranarayanan
2.Mani
3.Sankara Subbiah
4.Gomathy

: Petitioners 1 to 4/Petitioners 1 to 4

Vs.

1.Bhoothathan
2.Mariappan

: Respondents/Respondents

PRAYER in C.M.P(MD).No.7397 of 2019: The Civil Miscellaneous Petition has been filed under Section 5 of Limitation Act, to condone the delay of 413 days in presenting the above civil revision petition before this Court.

PRAYER in C.R.P. (MD).SR.No.18621 of 2018: The Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order in I.A.No.65 of 2015 in A.S.No.38 of 2009 dated 23.09.2016 on the file of the Sub Court, Sankarankovil and allow this Civil Revision Petition.

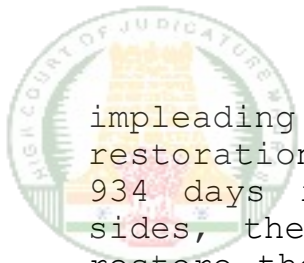
For Petitioner : Mr.N.Mariappan

For Respondents : Mr.M.P.Senthil

O R D E R

This petition has been filed by the petitioners seeking to condone the delay of 413 days in filing the above Civil Revision Petition.

2.The learned counsel for the petitioners would state that the petitioners filed a suit in O.S.No.12 of 2005 before the Principal District Munsif, Sankarankovil, Tirunelveli District, against the respondents herein seeking the relief of declaration and other reliefs and it was dismissed on 05.12.2007, against which, appeal in A.S.No.38 of 2009 was filed before the Subordinate Court, Sankarankovil. Pending Appeal, one of the appellants died and his legal heirs were brought on record. Thereafter, according to the petitioner, he suffered severe diabetes and hyper tension and was under continuous treatment and after he recovered, he contacted his counsel and came to know that the appeal was dismissed on 06.06.2012 for the reason that the amendment was not carried out after



impleading the legal heirs. Hence, the petitioners filed restoration petition along with a petition to condone the delay of 934 days in filing the restoration petition. After hearing both sides, the learned Judge dismissed the condone delay petition to restore the above appeal on 23.09.2016. Thereafter, the lower Court counsel filed the copy application and the same was made ready on 16.12.2016. The learned counsel for the petitioners would further submit that due to severe diabetes and heart ailment, he was not able to contact his counsel for filing revision. In this circumstance, the case bundle has been misplaced by the lower Court counsel and in spite of best effort, the same could not be traced out. However, during the month of March 2018, after frantic search, the same was located. Due to the above reasons, there has been a delay of 413 in filing the above revision. The above delay occurred is neither wilful nor wanton. Thus, he would pray to condone the delay.

3. Heard the learned counsel for the petitioners and also perused the materials available on record.

4. Perusal of record shows that the appeal itself was dismissed for not taking steps to amend the cause title of the petition on record since the legal heirs of one of the appellant, who died pending appeal and to restore the same, a petition was filed with a condone delay petition to condone the delay of 934 days in filing the restoration petition and the learned Judge, finding that there is no acceptable reason to condone the huge delay of 934 days, dismissed the condone delay application. Even thereafter, the petitioner was not diligent even to file a revision in time and again there was a delay of 413 days in filing the above Civil Revision Petition. The reasons stated for the delay are not acceptable reason and by applying the principles enumerated 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.

5. Accordingly, this Civil Miscellaneous Petition is dismissed. In view of the order passed in CMP(MD)No.7397 of 2019, C.R.P. (MD)SR.No.18621 of 2018 is rejected at the SR stage itself. No costs.

Sd/-

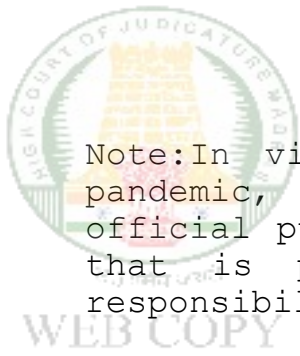
Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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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
The Subordinate Judge,
Sankarankovil
Tirunelveli District.

+1 CC to Mr.M.P.SENTHIL, Advocate SR.No. 11366

C.M.P. (MD) No.7397 of 2019
in
CRP (MD) .No.SR18621 of 2018
15.03.2021

DKS (CO)
TR(07.06.2021) 3P 3C