



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

**Monday, the Twenty Second day of March Two Thousand and Twenty One
PRESENT**

The Hon'ble Mr. Justice N.SATHISH KUMAR

CMP(MD). No.2557 of 2018

in

S.A.No.731 of 1997

1 R.Ramasamy
2 R.C.Karuppatti Ambalam
3 A.Machakkalai
4 R.V.Periyakaruppan ...Petitioners/Appellants

Vs

1 P.C.Chinna Kaumban @ Chinnakali
2 Nallapichan
3 Chinnakaruppatti
4 K.Periasamy ...Respondents/Respondents

Prayer in CMP(MD). No.2557 of 2018:-

Civil Miscellaneous Petition is filed under section 5 of Limitation Act, praying this Hon'ble Court to Condone the delay of 3366 days in filing the petition to restore the Second Appeal in S.A.No.731 of 1997.

Prayer in S.A.No.731 of 1997 :

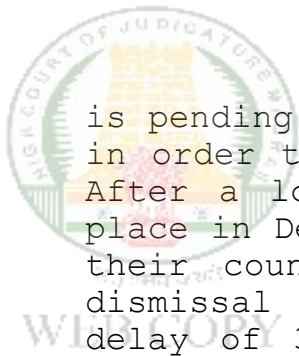
Second Appeal filed under section 100 of Civil Procedure Code, against the judgment and decree dated 26.11.1996 made in A.S.No.7 of 1994 on the file of the I Additional Subordinate Judge, Madurai, reversing the judgment and decree dated 29.12.1992 made in O.S.No.27 of 1989 on the file of the District Munsif Court, Melur.

ORDER: -

Civil Miscellaneous Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.P.T.S.Narendravasan, Advocate for the Petitioner and of Mr.P.Thiagarajan, Advocate for the respondents, this Court made the following order:

This application has been filed to condone the delay of 3366 days in filing the petition to restore the Second Appeal in S.A.No.731 of 1997.

2. The main reason assigned in the affidavit for the delay is that the Second Appeal came up for final hearing in the year 2008. The counsel on record not noticed about the case posted for final hearing, due to oversight. Therefore, the case was posted for dismissal on 20.11.2008. Due to non-appearance, the above case was dismissed on the same day i.e., on 20.11.2008 for non-prosecution. The counsel on record and the petitioners were under the impression that the second appeal was not posted for final hearing and the same

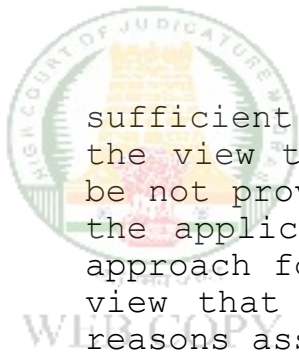


is pending before this Court. In the meantime, the petitioners also, in order to eke out their livelihood, went to other state for job. After a long time, when the petitioners returned to their native place in December 2017, they enquired about the stage of the case to their counsel and thereafter only, they came to know about the dismissal of the suit in the year 2008 itself. Hence, there is a delay of 3366 days in filing the petition to restore the second appeal. Therefore, prays for allowing this application.

3. Denying the entire allegations, the respondents have filed a counter affidavit stating that the reasons assigned in the affidavit are false. In fact, in the previous application, to condone the delay in filing the petition to set aside the abatement caused due to the death of the first appellant in the above second appeal, the petitioners have stated that they came to know about the pendency of the Second Appeal only in the year 2013. Thereafter, the counsel on record prepared legal heir petition and the same was also mixed with some other bundles due to oversight of advocate clerk. Hence, there was a delay in filing the application to set aside the abatement. It is further stated that from the above said averments, it has been clear that the petitioners were having the knowledge with regard to the above second appeal as early as 2013 and therefore, the averments in the present petition that only during December 2017, they enquired about the stage of the case to their counsel are not true. Hence, prays for dismissal of this application.

4. This Court heard the submissions of the learned counsel on both sides and also perused the materials available on record.

5. Admittedly, the Second Appeal was dismissed on 20.11.2008 for non-prosecution. No doubt, the Court will always show the liberal approach, while entertaining the application under Section 5 of Limitation Act. The word "sufficient cause" meant under Section 5 of Limitation Act is normally not to destroy the rights of the parties. Therefore, the Court normally, extends the benefit by accepting the reasons, which are acceptable. Now in the particular case, it is the specific reasons of the petitioners that the counsel on record did not notice the case being posted for final hearing and only in the year 2017, they came to know about the dismissal of the suit. Absolutely, there is no details as to which state the petitioners were working. The details given in the affidavit are vague and no particulars whatsoever was given. In the previous application, filed by the petitioners to condone the delay in filing the petition to set aside the abatement, the petitioners have given reasons, as if they came to know about the pendency of the appeal in the year 2013 itself, whereas in the present application, a different stand has been taken, as if he came to know about the pendency of the appeal in the year 2017. The two types of reasons for condoning the delay in the same proceedings makes it very clear that the reasons assigned for condonation of such huge delay of 3366 days, only in order to condone the delay without any



sufficient cause or any acceptable reasons. Hence, this Court is of the view that when the reasons given in the application appears to be not proved and vague and just made for the purpose of maintaining the application, the word sufficient cause cannot be given liberal approach for such unacceptable reasons. Hence, this Court is of the view that the huge delay has not been properly explained and the reasons assigned in the petition also bereft of particulars.

6. In such view of the matter, this application is liable to be dismissed. Accordingly, the same is dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

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 I Additional Subordinate Judge, Madurai

2 The District Munsif, Melur.

1cc to Mr.P.Thiagarajan, Advocate SR No.12854

ORDER DATED : 22/03/2021

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ORDER

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CMP(MD) . No.2557 of 2018

in

S.A.No.731 of 1997

Dismissing the petition to condone the delay of 3366 days in filling the petition to restore the S.A.No.731 of 1997.

KB(16.04.2021) 3P 4C