



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.P. No.14431 of 2016
in S.A. Sr. No.66932 of 2016

C.M.P. No.14431 of 2016
in S.A. Sr. No.66932 of 2016

Fathima Bi @ Zamruth Jan

.. Petitioner

Vs.

Raiz Begum

.. Respondent

Civil Miscellaneous Petition is filed under Order 41 Rule 3A r/w. Order 42 Rule 1 C.P.C., to condone the delay of 2508 days in filing the second appeal.

For Petitioner :Mr. I.Abrar Md Abdullah

S.A. Sr. No.66932 of 2016

Fathima Bi @ Zamruth Jan

.. Appellant

Vs.

Raiz Begum

.. Respondent

Appeal suit is sought to be filed against the judgment and decree of the learned Principal District Judge, Dharmapuri @ Krishnagiri dated 31.01.2007 made in A.S. No.15 of 2006 reversing the judgment and decre of the learned Subordinate Judge, Dharmapuri dated 23.02.2006 made in O.S. No.172 of 1998.

For Appellant : Mr. I.Abrar Md. Abdullah

O R D E R

This petition is filed to condone the delay of 2508 days in filing the above second appeal.

2. The petitioner is the defendant in the suit in O.S. No.172 of 1998 on the file of Sub Court, Dharmapuri, which was filed by the respondent for specific performance on an agreement



dated 16.06.1996. Though the suit was dismissed by the trial Court earlier, the appeal filed by the respondent in A.S. No.73 of 2003 was allowed and the matter was remanded to the lower Court for fresh consideration. Even thereafter, the trial Court dismissed the suit by a judgment and decree dated 23.02.2006 and the respondent filed an appeal in A.S. No.15 of 2006 before the Principal District Court, Dharmapuri. However, after the second remand, the trial Court decreed the suit as prayed for. As against the same, the appeal filed by the appellant was dismissed. It is stated that the suit was decreed by judgment and decree dated 31.01.2007. It is further stated by the petitioner that an execution petition in R.E.P. No.17 of 2010 is also filed to get the sale deed executed through Court. However, the above appeal has been preferred with an inordinate delay of 2508 days.

3. In the affidavit filed in support of the petition the petitioner has stated the following reasons:

" ...

6. I further submit that though the judgment and decree was passed on 31.01.2007, I had instructed my lower Court counsel to obtain copies of the entire set so that I could prefer an appeal before this Hon'ble Court. I further submit that despite several oral requests that were made, I was able to get the certified copies of all the records only during October 2013 and thereafter I had sent the entire records to my counsel at Chennai in order to file the appeal. However to my misfortune, the entire case bundle had got mixed up with other bundle and therefore the same could not be traced in time in order to file an appeal in this Hon'ble Court. Therefore there has occasioned a delay of 2508 days in filing the present appeal which is neither wanton nor wilful and if the same is not condoned I will be put to irreparable loss and hardship."

4. Absolutely there is no proper reason stated in the affidavit explaining the inordinate delay of more than seven years. The reason stated by the petitioner that he could obtain certified copies of all records only during October 2015 cannot be believed. It is admitted that the respondent has filed an execution petition in the year 2010. Therefore, the petitioner's submission that he has waited till 2015 for getting certified copy of decree to file the appeal cannot be believed. This Court finds that the reason stated by the petitioner for the delay has not been established by producing any verifiable material.

5. Since no plausible or acceptable reason is given to condone the delay of 2508 days in filing the second appeal, this



Court is not inclined to entertain this petition. Accordingly, this petition is dismissed. Consequently, connected second appeal in S.A. Sr. No.66932 of 2016 is rejected at admission stage itself.

WEB COPY

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bkn

To:

1. The Principal District Judge, Dharmapuri @ Krishnagiri.
2. The Subordinate Judge, Dharmapuri

+1cc to Mr. I.Abrar Md. Abdullah, Advocate, S.R.No.22828

C.M.P. No.14431 of 2016
in S.A. Sr. No.66932 of 2016

NK(CO)
CT 19/04/2022