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C.M.P.No.5705 of 2020
in S.A.SR.No.20846 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.P.No.5705 of 2020
in
S.A.SR.No.20846 of 2020

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1.P.Masilamani

2.M.Mahesh

...Petitioners/Appellants

Vs.

V.Lakshmi

... Respondent

Civil Miscellaneous Petition is filed under Order 41 Rule 3A read with Order 42 Rule 1 of Civil Procedure Code, to condone the delay of 1917 days in filing the above second appeal.

For Petitioners/Appellants : Mr.B.Neduncheziyan

For Respondent : Mr.Mukunth
for Sarvabhauman Associates



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S.A.SR.No.20846 of 2020

1.P.Masilamani

2.M.Mahesh

... Appellants

Vs.

V.Lakshmi

... Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the appeal against the judgement and decree dated 27.06.2012 in A.S. No.85 of 2011 on the file of the Principal District Court, Coimbatore confirming the judgement and decree dated 18.04.2011 in O.S.No.130 of 2007 on the file of learned II Additional Subordinate Judge, Coimbatore.

For Appellants : Mr.B.Neduncheziyan

For Respondent : Mr.Mukunth
for Sarvabhauman Associates

ORDER

This petition is filed to condone the delay of 1917 days in filing the above second appeal.

2. The petitioners herein/appellants in the Second Appeal are the defendants in the suit in O.S.No.130 of 2007 and they filed the present second appeal against the judgement and decree dated 27.06.2012 in



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A.S. No.85 of 2011 on the file of the Principal District Court, Coimbatore confirming the judgement and decree dated 18.04.2011 in O.S.No.130 of 2007 on the file of learned II Additional Subordinate Judge, Coimbatore.

3. In the affidavit filed in support of the petition, it is stated that the petitioners/appellants instructed their counsel who conducted the case in the lower court for them to file Second Appeal before this Court and that the petitioners were also informed about the filing of the Second Appeal before this Court on their behalf. It is further stated that the respondent/plaintiff filed an Execution Petition in E.P.No.184 of 2018 before the Executing Court. It is contended that after receiving notice in the said execution proceedings, the petitioners came to know that the judgement and decree passed by the Trial Court and First Appeal Court are not challenged in the Second Appeal. However, the petitioners have not given the date on which they received summons in the execution proceedings.

4. It is to be noted that the appeal suit in A.S.No.85 of 2011 was disposed of by the judgement and decree dated 27.06.2012. The petitioners



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have filed appeal with a delay of nearly six years. When the execution petition itself was filed in 2018, it can be presumed that notice might have been issued long back. The present appeal is presented only in February, 2020. Therefore, this Court finds no acceptable reasons for the delay even after the receipt of notice in the execution proceedings. The explanation offered by the petitioners in the affidavit filed in support of this miscellaneous petition, is unacceptable. Since the petitioners have not given any valid explanation for the inordinate delay of more than six years, this Court cannot show any indulgence in favour of the petitioners. The delay will cause serious prejudice to the respondent. The case of the petitioners that they instructed his counsel before lower court to file second appeal but they came to know about non-filing only in 2018 is unbelievable.

5. This Court normally is expected to show some leniency. The petitioners in this case do not deserve such sympathy for want of proper reasons to condone the delay of 1917 days in filing the above second appeal. Having regard to the facts and circumstances of the case, this Court is not inclined to entertain the petition.



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6. Accordingly, C.M.P.No.5705 of 2020 is dismissed. Consequently,
Second Appeal is rejected at the SR stage itself. No costs.

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Index: Yes / No
Speaking order / Non speaking order

dm

To

- 1.The Principal District Court, Coimbatore.
- 2.The II Additional Subordinate Judge, Coimbatore.
3. The Section Officer,
VR Section,
High Court, Madras.



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S.S.SUNDAR, J.,

dm

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