



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.P. (MD) No.310 of 2020

in

S.A.(MD) SR No.726 of 2020

Abbas Ali

... Petitioner/Appellant

-vs-

1. A.Peer Mohamed (V) Babu

2. Manikandan

3. Joint Sub Registrar-2,

Periyakulam, Theni District. ... Respondents/Respondents

Prayer in C.M.P. (MD) No.310 of 2020:- Petition filed under Section 5 of Limitation Act to condone the delay of 373 days in filing the second appeal.

Prayer in S.A. (MD) SR No.726 of 2020:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree of the Sub Court, Periyakulam, in A.S.No.21 of 2014 dated 13.09.2017 in reversing the judgment and decree in O.S.No.129 of 2009 dated 28.08.2014 passed by the District Munsif Court, Periyakulam.

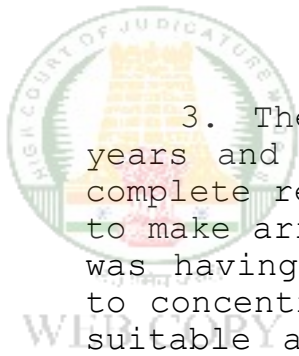
For Petitioner : Ms.Porkodi Karnan
for M/s.Polax Legal Solutions

For Respondents : No appearance

ORDER

The Civil Miscellaneous Petition is filed to condone the delay of 373 days in filing the second appeal.

2. The learned counsel appearing on behalf of the petitioner made a submission that the judgment in A.S.No.21 of 2014 was delivered by the first appellate court on 13.09.2017 and the petitioner/appellant applied for the copy of the judgment on 14.09.2017. The copy of the judgment was made ready on 28.09.2018. Therefore, the second appeal ought to have been filed on or before 27.12.2018. However, it was filed with a delay of 373 days.



3. The petitioner/appellant states that he is aged about 70 years and was suffering from hypertension and was advised to take complete rest. Thus, the petitioner was unable to meet his advocate to make arrangement for filing the second appeal. He states that he was having continuous headache, fatigue and confusion and not able to concentrate on anything. Therefore, he could not able to find a suitable advocate in time to file the second appeal. Thus, the delay is to be condoned.

4. Except the above reasons, the petitioner is unable to substantiate any valid or reasonable ground for the purpose of condoning the enormous delay of 373 days in filing the second appeal. The purpose of law of limitation is to ensure that the litigants are vigilant and prudent enough in pursuing their rights in accordance with law. A person, who is not vigilant in pursuing his right, then such a person is not entitled for any relief from the hands of the Courts. No doubt, the Courts are taking consistent view in condoning the delay, if such delay is meagre. However, enormous delay in filing the appeals cannot be condoned in a routine manner. For instance, if the delay is one or two months, then the Courts are always liberal in condoning the delay, understanding the practical difficulties of the litigant. However, if the delay goes beyond the reasonable period, then the reasons must be specific, which all are to be acceptable to the court of law.

5. By condoning the enormous delay, Courts are not expected to dilute the law of limitation. The law of limitation has got a definite purpose and object. If such object is defeated, then everybody will file appeal at their wish without reference to the delay and the same will cause prejudice to the rights of the other parties, who all are the decree holders. The Courts are bound to take a balanced approach. The rights of the decree holders are to be protected. Enormous delay in filing the appeal would cause prejudice to the rights of the other parties. Thus, any appeal is to be filed within the period of limitation and in the event of enormous delay in filing the appeal, the Courts are expected to be cautious in condoning the delay and it cannot be a mechanical affair.

6. In every such delay, the reasons must be stronger enough to consider the same. Otherwise, the parties are not entitled to get such enormous delay condoned and therefore, this Court is of the opinion that the petitioner is not entitled for the relief.

7. Perusal of the affidavit filed in support of the civil miscellaneous petition reveals that except by stating that the petitioner was suffering from hypertension and advised to take rest, there is no other proof to establish that the delay was occurred beyond his control. This being the factum established, the petitioner has failed to establish any acceptable ground for the condoning the delay.



8. The learned counsel for the petitioner made an attempt to argue the case on merits by stating that the petitioner is having fair chances of success in the appeal. The said ground cannot be a valid one for the purpose of condoning the enormous delay. When the Courts are taking the petitions to condone the delay, the reason put forth for condoning the delay is to be considered and the merits of the appeal may not stand always in the way. However, in exceptional cases, if the appellant could able to substantiate the grounds and the reasons, then alone the Courts will consider all those issues, but not otherwise.

9. In the present case, the reasons stated by the petitioner for condoning the delay of 373 days are flimsy and unacceptable and therefore, the Civil Miscellaneous Petition is dismissed and the Second Appeal stands rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Sub Judge,
Periyakulam,

2.The District Munsif,
Periyakulam.

3.The Joint Sub Registrar-2,
Periyakulam, Theni District.

+1 CC to M/s.PORKODI KARNAN (POLAX LEGAL SOLUTIONS), Advocate
(SR-14949[F] dated 28/03/2022)

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S.A.(MD) SR No.726 of 2020
28.03.2022

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