



WEB COPY

C.M.P. (MD) No.4672 of 2021 in
S.A. (MD) SR No.2674 of 2021

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.4672 of 2021

in

S.A. (MD) SR No.2674 of 2021

Thiruvanamalai

... Petitioner/Appellant

-vs-

1. Kandasamy Pillai,
2. Jeyalakshmi
3. Vijayarani
4. Pasungili
5. Amutha
6. Aanandhajothi
7. Kaliammal
8. Gunasekaran
9. Kutti @ Krishnamoorthy
10. Saravanan
11. Ponraj
12. Murugesan
13. Selvaraj
14. Velmurugan
15. Muthulakshmi

... Respondents/Respondents

Prayer in C.M.P. (MD) No.4672 of 2021:- Petition filed under Section 5 of Limitation Act to condone the delay of 324 days in filing appeal against Decree and Judgement dated 15.11.2017 passed in A.S.No.32 of 2014 of the Additional Sub-Ordinate Judge, Dindigul confirming the decree and Judgement dated 15.04.2014 passed in O.S.No.401 of 2008 on the file of the Principal District Munsif Judge, Dindigul.

Prayer in S.A. (MD) SR No.2674 of 2021:- Appeal filed under Section 100 of Civil Procedure Code to set aside the Decree order and Judgement dated 15.11.2017 passed in A.S.No.32 of 2014 of the Additional Sub-Ordinate Judge, Dindigul confirming the decree and fair order dated 15.04.2014 passed in O.S.No.401 of 2008 on the file of the Principal District Munsif, Dindigul.

For Petitioner : Mr.S.Raja

For RR1 to 7 & 11 to 15: No appearance

RR8 to 10 : Batta due



ORDER

The miscellaneous petition is filed to condone the delay of 324 days in filing the second appeal against the judgment and decree dated 15.11.2017 passed in A.S.No.32 of 2014 confirming the judgment and decree dated 15.04.2014 passed in O.S.No.401 of 2008.

2. The petitioner states that the judgment was pronounced on 15.11.2017 in A.S.No.32 of 2014 on the file of the Principal District Court, Dindigul, while he was in Chennai. He was suffering from high Jaundice and was taking Homeopathy treatment. Nobody informed his Advocate about his ill health. He returned to his native place Dindigul on 02.01.2019 and thereafter, met the counsel and filed copy application for second appeal. The copy application was filed on 03.01.2019. The certified copy was received on 16.06.2020 by the learned counsel. Thereafter, the second appeal was filed on 03.08.2020.

3. Let us analyse the reasons stated for condoning the huge delay of 324 days. The petitioner on the one end says that the judgment was pronounced on 15.11.2017. On the other hand, he says that he was taking treatment for high Jaundice. However, there is no proof to establish the same. The practice of pleading the decease of Jaundice is prevailing in the Courts for several years and therefore, such mechanical averment in the affidavit cannot be trusted upon, unless it is established with some proof. Thus, this Court is of the opinion that the reasons stated in the affidavit are certainly not candid nor convincing. Further, it is stated that the petitioner came to Dindigul from Chennai on 02.01.2019.

4. 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 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. In this case, the copy application was filed on 03.01.2019. Thus, the copy application itself was filed after a lapse of more than one year from the date of judgment in the appeal suit. Thus, the reason stated in the affidavit cannot be considered for the purpose of condoning the huge delay, as it is not supported with any other document, nor such delay is acceptable and the petition is liable to be dismissed.

8. Accordingly, the Civil Miscellaneous Petition stands dismissed and the Second Appeal in S.A.(MD) SR.No.2674 of 2021 stands rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

To

- 1.The Additional Sub Judge, Dindigul.
- 2.The Principal District Munsif, Dindigul.

Copy to:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.S.RAJA, Advocate (SR-15482[F] dated 30/03/2022)

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S.A. (MD) SR No.2674 of 2021
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