



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

Thursday, the Twenty Eighth day of April Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CMP(MD) No.2486 of 2022

IN

AS(MD) SR.No.43123 of 2020

M.SANKAR

... PETITIONER/PETITIONER
/APPELLANT/PLAINTIFF

Vs

1 K.K.V.A.ALAGIYA SINGARACHARIYAR
2 K.K.V.A.S.PADMAVATHI AMMANGAR
3 S.JAYASHRI
4 V.S.P.N.RENGASHRI
5 V.SHOBANA

... RESPONDENTS/RESPONDENTS
/RESPONDENTS/DEFENDANT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to pass an order to recall the order passed in CMP No.5883 of 2020 in AS.SR No.43123/2020 dated 20.10.2021.

Prayer in CMP(MD) . 5883/ 2020 :

To condone the delay of 376 days in filing the appeal suit before this honourable court.

PRAYER IN AS(MD)SR.No.43123 of 2020:

To call for the records from the court below and set-aside the decree and judgement of learned III rd Additional District Court, Trichy dated 12.04.2019 in O.S.No.84/2011 by allowing this Appeal.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.RAMASAMY, Advocate for the petitioner and of MR.VAMSIDHAR, Advocate on behalf of the 1st Respondent and of MR.RAGUVARAN GOPALAN, Advocate on behalf of the Respondent Nos.2 to 5, the court made the following order:-

The petitioner herein filed O.S.No.84 of 2011 before the III Additional District Judge, Tiruchirapalli for specific performance. The suit was dismissed by judgment and decree dated 12.04.2019. Questioning the same, the plaintiff filed A.S.(MD) SR No.43123 of 2020 with delay. He had also filed C.M.P.(MD) No.5883 of 2020 for condoning the delay of 376 days in filing the appeal. When the matter was taken up for hearing, the learned counsel for the petitioner sought leave to withdraw the petition. The civil



miscellaneous petition was therefore dismissed as withdrawn on 20.10.2021. Now, this civil miscellaneous petition has been filed for recalling the said order.

2. In the affidavit filed in support of the recall petition, it is stated that subsequent to the filing of the first appeal, compromise talks took place and that based on the advice given by his counsel, he had withdrawn the civil miscellaneous petition and that thereafter, the defendants could not be contacted. The petitioner therefore, calls upon this Court to recall the earlier order dismissing the condone delay petition as withdrawn. This prayer for recall is contested by the respondents herein. They have filed a counter affidavit. In the counter, it has been pointed out that the version projected by the petitioner has been denied. According to them, no compromise talks took place. They also pointed out that the petitioner has not mentioned the name of the person under whose auspicious, compromise talks were held. I therefore, directed the petitioner to file an additional affidavit. The additional affidavit has now been filed and some more details have been given.

3. The petitioner did not really stand to gain anything by an unconditional withdrawal of the condone delay petition. Obviously, there must have been some reason for withdrawing the civil miscellaneous petition. Now, he wants this Court to recall the order. The respondents cannot be said to have suffered any prejudice whatsoever. Even before service of notice in C.M.P.(MD) No.5883 of 2020, it was withdrawn. Since the petitioner now states that he was misled by the advice given to him, in the interest of justice, I recall the earlier order dated 20.10.2021. C.M.P.(MD) No.2486 of 2022 is allowed. Registry is directed to place C.M.P. (MD) No.5883 of 2020 before the concerned Judge.

sd/-

28/04/2022

/ TRUE COPY /

/ /2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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

THE III ADDITIONAL DISTRICT JUDGE,
TRICHY.

COPY TO

WEB COPY

THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CMP(MD) No.2486 of 2022

IN

AS (MD) SR.No.43123 of 2020

Date :28/04/2022

RS/PN/SAR.4 (11.05.2022) 3P-3C