



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Monday, the First day of August Two Thousand and Twenty Two

PRESENT

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The Hon`ble Mr.Justice B.PUGALENDHI

CMP(MD)No.6490 of 2022

in

SA(MD)No.517 of 2017

Panappandi

... Petitioner/Appellant

Vs

Ramakrishnan

... Respondent/Respondent

Prayer in CMP(MD)No.6490 of 2022 :- Civil Miscellaneous Petition filed under Order 41 Rule 19 of C.P.C., to set aside order dated 15.12.2021 in S.A(MD)No.517 of 2017 and to restore the Second Appeal SA(MD)No.517 of 2017 on the file of this Hon'ble Court and thus render justice.

Prayer in SA(MD)No.517 of 2017:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 14.06.2017 passed in A.S.No.21 of 2015, on the file of the Additional District Court, Theni (Periyakulam) reversing the judgment and decree dated 21.11.2014 passed in O.S.No.190 of 2010 on the file of the Subordinate Court, Theni.

ORDER:- This Civil Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.Ponsenthilkumaran, Advocate for the Petitioner and of Mr.S.Alagarsamy, Advocate for the Respondent, this Court made the following order:-

This application is filed to set aside the order dated 15.12.2021 passed in SA(MD) No.517 of 2017 and to restore the above Second Appeal on file.

2.Perusal of the order dated 15.12.2021 shows that when the second appeal was taken up for hearing on 12.11.2021, the learned counsel for the appellant sought for short accommodation till 29.11.2021. Thereafter, on 29.11.2021, the learned counsel for the appellant submitted that he is not having any instructions from the appellant and requested for further time. On 08.12.2021, the learned counsel expressed that there was no instructions from the appellant and filed a memo to that effect. Hence, Registry was directed to list the matter on 14.12.2021 in the name of the appellant. On 14.12.2021 also, there was no representation and therefore, the



second appeal was listed on 15.12.2021 under the caption "for dismissal". On 15.12.2021, as there was no representation for the appellant, this Court dismissed the Second Appeal for non-prosecution.

3. The learned counsel appearing for the petitioner/appellant submits that this application was originally filed on 22.03.2022 through the present counsel. The earlier counsel has sent a letter dated 12.11.2021 to the petitioner/appellant to contact him and since he was pre-occupied with some family issues, he could not contact his counsel on receipt of that letter. Later, he came to know about the order of dismissal only on 03.02.2022. Therefore, he filed this petition on 22.03.2022, by engaging a new counsel. Since the application was filed without serving copies to the learned counsel appearing for the respondent, Registry has returned the same. Thereafter, this application has been represented with a delay of 74 days without mentioning the date of representation and the same was also mechanically condoned by the Joint Registrar (Judicial) on 21.07.2022.

4. This Court is of the view that the appellant is not having any serious interest in prosecuting the appeal and therefore, this Court is not inclined to entertain this application. Accordingly, this application is dismissed.

5. Registry is directed to call for an explanation from the Joint Registrar (Judicial) that how he/she entertained this application, even without ascertaining the date of representation.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/08/2022

Sub Assistant Registrar (CS)

TO

1. The Additional District Judge,
Theni. (Periyakulam)

2. The Subordinate Judge,
Theni.

Copy to:-

1. The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

<https://www.mhc.tn.gov.in/judis>



CMP(MD)



22

2.The Section Officer,
'B' Section,
Madurai Bench of Madras High Court,
Madurai.

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+ 1 CC to M/s.S.Ponsenthilkumaran, Advocate, SR.No.35451

ORDER DATED : 01/08/2022

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ORDER

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CMP (MD) No.6490 of 2022
in
SA (MD) No.517 of 2017

Giving direction and etc.
as stated within.

SS/SBN/18/08/2022/ 3P 6C