



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.01.2022

DELIVERED ON : 21.02.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.P(MD)No.4668 of 2019

and

S.A(MD)SR.No.38540 of 2018

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1.Palanisamy
2.Veeramalai

... Petitioners/Appellants

Vs.

1.P.Muthusamy
2.V.Muthusamy
3.Karnam
4.The District Collector,
Trichirappalli District.

5.The Thasildar,
Manapparai Taluk,
Trichy District.

... Respondents/ Respondents

PRAYER IN CIVIL MISCELLANEOUS PETITION: Civil Miscellaneous petition filed under Section 5 of the Limitation Act, to condone the delay of 1199 days in filing the Second Appeal.

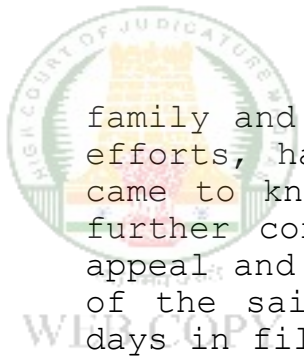
PRAYER IN SECOND APPEAL: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.10 of 2007 on the file of the learned Sub Ordinate Judge, Trichirapalli, dated, 30.06.2014, confirming the judgment and decree passed in O.S.No.510 of 1996 on the file of the Principal District Munsif Court, Manapparai, dated 20.12.2004.

For Petitioners : Mr.P.Ganapathi Subramanian
For Respondents : Mr.G.Sridharan
for R2 and R3

ORDER

The present application has been filed to condone the delay of 1199 days in filing the second appeal.

2. The petitioners in their affidavit have stated that they have suffered a decree in O.S.No.510 of 1996 on the file of District Munsif Court, Manapparai on 20.12.2004. Challenging the same, they have filed an appeal before Subcourt, Trichirappalli in A.S.No.10 of 2007, which was disposed of on 30.06.2014. According to the petitioners, the first petitioner is a senior citizen and he was under continuous illness due to age related ailments. He could not file the appeal in time due to his mental ill health. He left the



family and was wandering elsewhere. His family members after hectic efforts, have traced him just three months back. After enquiry, he came to know that no second appeal has been filed in time. He had further contended that he had bright chances of success in second appeal and even now he is taking continuous treatment. In the light of the said facts, he has sought for condoning the delay of 1199 days in filing the above second appeal.

3. The learned counsel for the 2nd respondent has filed a counter affidavit disputing the allegations stated in the condone delay petition. The learned counsel for the 2nd respondent had contended that no document has been produced on the side of the petitioner either to prove his mental illness or the fact that he left the family and he was wandering. The respondent has further contended that no dates have been furnished by the petitioners and the entire pleading regarding the delay is vague. That apart, the deponent of the affidavit is the 1st appellant in the appeal. The 2nd appellant is shown as the 2nd petitioner in the condone delay petition. Even assuming without admitting that the reasons stated by the 1st petitioner are true, no reason has been assigned why the 2nd petitioner has not come forward to file the second appeal in time. The respondent has further contended that both the Courts below after careful consideration of oral and documentary evidence, have dismissed the suit filed by the petitioner/plaintiff concurrently and no substantial question of law arises for consideration in the second appeal.

4. I have carefully considered the pleadings and the submissions made on either side.

5. The judgment and decree in A.S.No.10 of 2007 has been passed by the Subcourt, Trichirapalli on 30.06.2014. Copy application has been made on 04.07.2014 and the copies were made ready on 23.02.2015. The present second appeal has been presented on 07.09.2018. The above said dates will clearly indicate that the appellants have not taken any steps to file a second appeal right from February 2015 till 7th September 2018. That apart, no dates have been furnished by the 1st petitioner regarding the alleged mental illness or for the fact that he had left the house and wandering elsewhere. The 1st petitioner has not chosen to produce any medical records or hospitalisation records to establish his alleged illness during the relevant period of time.

6. The deponent of the condone delay affidavit is the 1st petitioner, who has contended that he was suffering from certain illness. However, no reason has been assigned why his brother, who is the 2nd petitioner in the condone delay petition has not chosen to file the appeal in time. The delay is more than 1000 days and the petitioner has not provided any details about the reasons for the delay to the satisfaction of the Court. Hence, this Court finds that the huge delay has not been satisfactorily explained by the petitioners/appellants. Hence, C.M.P(MD)No.4668 of 2019 is



dismissed.
rejected.

Consequently, S.A. (MD) SR.No.38540 of 2018 stands

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar (CS)

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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

- 1.The Subordinate Judge, Tiruchirappalli.
- 2.The Principal District Munsif, Manapparai.
- 3.The District Collector,
Trichirappalli District.
- 4.The Thasildar,
Manapparai Taluk, Trichy District.

COPY TO:-

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

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-7310[F] dated 21/02/2022)

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate (SR-8463[F]
dated 24/02/2022)

order made in
C.M.P (MD) No.4668 of 2019
in
S.A (MD) SR.No.38540 of 2018
Dated:
21.02.2022

nsn (CO)

GC (03.03.2022) 3P 9C