



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

Monday, the Fourteenth day of March Two Thousand and Twenty Two

PRESENT

The Hon`ble Mrs.Justice R.THARANI

C.M.P. (MD)No.7131 of 2021
in
CMP (MD)No.SR38590 of 2017
in
AS (MD)No.70 of 2007

S.JEYARANI

... PETITIONER/ PETITIONER /
APPELLANT

Vs

1 A.KRISHNAN (DIED) ,

2 K.DHANALAKSHMI

3 KASIYAMMAL,

4 MANGAYARKARASI (DIED)

5 S.JEEVA

... RESPONDENTS / RESPONDENTS /
RESPONDENTS

(5TH RESPONDENT IS BROUGHT ON RECORD AS LRS OF THE DECEASED 4th RESPONDENT VIDE COURT ORDER DATED 23.12.2021 MADE IN CMP (MD) No.9086/21 in CMP (MD)No.7131/21 in AS (MD)No.70/2007)

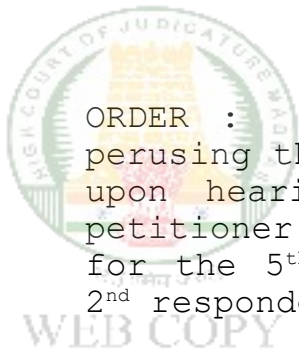
Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 1371 days in representing the above Civil Miscellaneous Petition in C.M.P(MD).SR.No.38590 of 2017 in A.S.(MD).No.70 of 2007.

PRAYER IN CMP(MD)No.SR38590 of 2017:

To restore the above appeal in A.S(MD)No.70 of 2007 which was dismissed for non-prosecution on 30.08.2017.

Prayer in AS(MD)No.70 of 2007:

To prefer this Memorandum of Appeal against the Judgment and Decree passed in O.S.No.567 of 2004 on the file of the Additional District Judge (Fast Track Court No.II), Madurai dated 20.03.2007.



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 Mr.M.P.SENTHIL, Advocate for the petitioner and of MR.A.ARUMUGAM, Advocate for M/S.AJMAL ASSOCIATES for the 5th respondent and of MR.P.PACKIYA MUTHU, Advocate for the 2nd respondent, the court made the following order:-

This petition is filed to condone the delay of 1371 days in representing the C.M.P.(MD)No.SR38590 of 2017 in A.S.No.70 of 2007.

2. On the side of the petitioner, it is stated that the petitioner filed a petition to restore the Appeal, which was dismissed for non prosecution on 30.08.2017. The paper was returned on 26.09.2017. After rectifying the mistake, it was re-presented on 08.01.2018. Again, the petition was returned on 10.01.2018. Due to old age, the petitioner was not able to contact her counsel. The petitioner contacted the Advocate during the first weeks of May 2018, during the summer vacation. Again the petitioner contacted her counsel during the first week of June 2018 and again, the petitioner contacted the counsel during August 2018. During Dhasara holidays, in October - 2018, the papers were traced out. The petitioner was diagnosed as suffering from Glaucoma on the right eye. She was taking treatment from January -2019, then, she underwent surgery on 25.09.2019 and contacted the counsel during March - 2020. Due to COVID-19 pandemic, the counsel advised the petitioner to contact him after the Lockdown is over. Due to some family problems, the petitioner was not able to contact the counsel. Hence, there is a delay of 1371 days in representing the restoration petition and prayed the petition to be allowed.

3. Brief substance of the counter filed by the fifth respondent adopted by the second respondent is as follows:-

The Appeal Suit was posted for hearing on 20.07.2017, 27.07.2017, 07.08.2017, 22.08.2017, 29.08.2017 and 30.08.2017. The appellant and his counsel are not ready for argument and the counsel reported no instruction on 29.08.2017. The name of the appellant was printed on 30.08.2017 and the case was dismissed for non prosecution on 30.08.2017. Only to avoid the case being posted before the particular Judge, the petitioner waited till the Judge retired from service. The delay is only a deliberate action on the part of the petitioner. Reasons stated in the affidavit are not true. Reasons stated in the affidavit for condonation of delay are not factually correct and are also legally untenable. Only with an intention to drag on the case, the petitioner has come forward with this petition and prayed the petition to be dismissed.

4. Reason stated in the petition is that the petitioner could not contact her counsel, due to her old age. The reason stated in the affidavit in support of the petition is not satisfactory, as the petitioner is a lapse of two years is able to contact her



counsel. She contacted the counsel during first weeks of June 2018. Non filing of the restoration petition between June - 2018 to August - 2018 was not explained. The papers are traced out by the counsel during October - 2018, even then, till March - 2020, no petition was filed. Even after the lock down was lifted, the petitioner has not come forward to file this petition. The petitioner has failed to explain the delay. The delay is 1371 days.

5. Though the reasons stated in the affidavit are not satisfactory, an opportunity for the petitioner to put forth her case has to be given in the interest of justice. Hence, this petition is allowed and the delay is condoned on condition that the petitioner shall pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the credit of the "District Siddha Medical Officer, CCRI, Periyakulam" (payable in Account No.10767823177, SBI, Periyakulam), on or before 22.03.2022.

6. Call on 24.03.2022, "for reporting compliance".

sd/-
14/03/2022

/ TRUE COPY /

/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE ADDITIONAL DISTRICT JUDGE,
(FAST TRACK COURT NO.II), MADURAI.

COPY TO:
THE DISTRICT SIDDHA MEDICAL OFFICER,
CCRI,
PERIYAKULAM

ORDER
IN
C.M.P. (MD)No.7131 of 2021
in
CMP (MD)No.SR38590 of 2017
in
AS (MD)No.70 of 2007
Date :14/03/2022

MK/VR/SAR.III/22.03.2022/3P/3C