



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

Wednesday, the Ninth day of February Two Thousand and Twenty Two

PRESENT

The Hon`ble Ms.Justice R.N.MANJULA

C.M.P(MD).No.9210 of 2021
in
A.S(MD).SR.No.54422 of 2021

A.PUSHPA

... PETITIONER/ APPELLANT

Vs

VELUSAMYSERVAI

... RESPONDENT/ PLAINTIFF

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 1551 days in filing the above Appeal in A.S.(MD).SR.No.54422 of 2021.

PRAYER IN A.S(MD).SR.No.54422 of 2021:

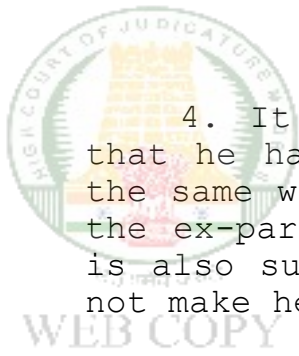
To set aside the Judgment and decree passed in O.S.No.58 of 2014 dated 30.09.2015 on the file of the court of District Judge, Sivagangai.

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.T.LAJAPATHI ROY, Advocate for the petitioner, the court made the following order:-

This petition has been filed to condone the delay of 1551 days in filing the first appeal challenging the judgment and decree dated 30.09.2015 passed in O.S.No.58 of 2014 on the file of the District Judge Sivagangai.

2. The petitioner is the defendant in the original suit. The suit has been filed for the relief of specific performance and an ex-parte decree was passed on 30.09.2015. The petitioner filed a petition in I.A.No.91 of 2017 to set aside the ex-parte decree and the same was dismissed on 06.06.2018. Challenging the said dismissal order, the petitioner filed C.R.P.SR.No.10877 of 2016 and the same was also dismissed because of the non-condonation of delay in preferring the revision petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.



4. It is submitted by the learned counsel for the petitioner that he has filed a review application against the said order and the same was later withdrawn with an idea to file an appeal against the ex-parte decree; the petitioner is an illiterate woman and she is also suffering from Cancer and that is the reason why she could not make her appearance in time; hence this delay may be condoned.

5. The learned counsel for the respondent submitted that the ex-parte decree was passed in the year 2015 and the petition to set aside the ex-parte decree was filed with a delay of two years and same was dismissed; this appeal is filed with a huge delay of 1551 days; Execution Petition has also been filed to execute the decree and the same is pending.

6. It is stated that the petitioner is an illiterate person and she is suffering from cancer and unfortunately her petition to set aside the ex-parte decree was dismissed. Admittedly the decree has not been passed on merits.

7. No doubt, the delay of 1551 days in filing the appeal is very huge and such an inordinate delay would have caused much hardships to the respondent. However, in order to enable the parties to contest the matter on merits and in the interest of justice, I feel that an opportunity should be given to the petitioner on payment of costs to the respondents.

8. Hence, this petition is allowed on payment of cost of Rs.10,000/- (Ten Thousand Rupees only) to the respondent on or before 17.02.2022. Failing which, this petition shall stand dismissed automatically without further reference to this Court.

9. Call on 18.02.2022 for reporting compliance.

sd/-
09/02/2022

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

TO
THE DISTRICT JUDGE,
SIVAGANGAI.

ORDER IN
C.M.P(MD).No.9210 of 2021
in
A.S(MD).SR.No.54422 of 2021
Date :09/02/2022

tta
MK/PN/SAR.II/16.02.2022/2P/2C