



CMP No.5659 of 2022
in
AS SR No.119434 of 2021

S.M.SUBRAMANIAM, J.

The present Civil Miscellaneous Petition is filed to condone the delay of 1844 days in filing the Appeal Suit against the judgment and decree dated 12.06.2014 passed by the learned District Judge, Cuddalore in OS No.25 of 2014.

2. The petitioner is the defendant in the suit and the respondents are the plaintiffs in the suit.

3. The respondents/plaintiffs instituted a suit for partition. The petitioner herein suffered an ex parte decree and the learned counsel for the petitioner states that the petitioner had no knowledge about the suit instituted by the respondents, who is none other than his wife and two sons.



4. The grievance of the petitioner is that the plaintiffs have stated the same address, wherein they are residing, for defendant also i.e., AEE/EE-4, IV Floor, New PWD Quarters, Thodhunter Nagar, Saidapet, Chennai-15.

5. Perusal of the plaint would reveal that the defendant's address also has been stated as the same as that of the address of the plaintiffs.

6. At the outset, for plaintiffs and the defendant, the same address has been given in the plaint and therefore, the petitioner states that he had no knowledge about the institution of the suit and only when an Advocate Commissioner was appointed to measure the suit schedule properties, he came to know about the suit and thereafter he filed an appeal. Thus there is a delay of 1844 days in filing the appeal.

7. As stated by the petitioner in the plaint, the residential address of the plaintiffs and the defendant are stated as one and the same and thus there is every reason to believe that the petitioner/defendant may not have knowledge as he stated in the affidavit filed in support of the present Civil



Miscellaneous Petition. Thus the reason for the delay is sufficient and acceptable for the purpose of condoning the delay, though it is long. Enormous delay can be condoned only if the reasons are sufficient enough and substantiated by the petitioner.

8. In the present case, the reasons stated by the petitioner are substantiated and established through the plaint instituted by the respondents, which would reveal that the address of the plaintiffs and the defendant are one and the same.

9. At the time of appointment of Advocate Commissioner in execution proceedings, the notice was served to the petitioner in the address at No.20, North Main Road, Sethiathope, Bhuvanagiri Taluk, Cuddalore District.

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10. The learned counsel for the petitioner made a submission that



even at the time of pendency of the suit, he was residing at Cuddalore and therefore, the respondents have manipulated and obtained an ex parte decree, so as to deprive the opportunity of the petitioner to contest the suit.

11. In view of the facts and circumstances, the delay of 1844 days in filing the appeal stands condoned.

12. Accordingly, the present Civil Miscellaneous Petition stands allowed.

15-02-2023

Svn

Note: Registry is directed to number the appeal, if it is otherwise in order and post the same for admission.

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