



C.M.P.No.9889 of 2023 and S.A.SR.No.41493 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.07.2023

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THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

C.M.P.No.9889 of 2023
and S.A.SR.No.41493 of 2023

Kalaivanan

... Petitioner/Appellant

Vs.

Ramasamy

... Respondent/Respondent

PRAYER: Petition is filed under Section 5 of the Limitation Act, 1963 to condone the delay of 1367 days in filing the second appeal.

For Petitioner : Mr.P.G.Perumal Pandian

For Respondent : Mr.V.Elangovan

ORDER

This petition has been filed seeking to condone the delay of 1367 days in filing the second appeal.



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2. The unsuccessful plaintiff before the trial Court and the Appellate Court is the petitioner/appellant herein. It is the case of the petitioner that he had applied for certified copy of the registration document, but he had received the same belatedly. It is his further case that since he could not bear the expenses for engaging the counsel, he had approached the Legal Services Authority, High Court, Chennai, and thereafter, he had filed an appeal with delay. The another prominent reason for not moving the appeal in time by the petitioner is viral spread of Covid-19 all over India. The delay of 1367 days in filing the above second appeal is neither wilful nor wanton and the same may be condoned.

3. The respondents have filed detailed counter. In the counter, it has been stated that the petitioner/appellant is running a Cable TV Network under the name and style of “Iyarkai” at Ariyankuppam, Pondicherry, which would show that he had means and though the petitioner had means, he paid only Rs.30/- towards Court fee in each circumstance to earn sympathy of the Court by projecting himself to be short of funds. The Counter affidavit is bereft of facts and the petitioner is very casual in his approach and that no sufficient cause has been stated for condoning the delay



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of 1367 days in filing the second appeal and that the delay is deliberate on the part of the petitioner and the petition has to be dismissed.

4.Mr.P.G.Perumal Pandian, learned counsel appearing for the petitioner, would submit that the petitioner was suffering from aftermaths of Covid-19 and due to his inability to raise funds, he had approached the High Court Legal Services Authority, Chennai, for the purpose of engaging a counsel and a petition has been filed through the counsel from Legal Services Authority, Chennai, and thereafter, he filed the petition for condoning the delay and that the petitioner has shown sufficient cause for condoning the delay of 1367 days.

5.Thiru V.Elangovan, learned counsel for the respondent, would submit that the petitioner has not shown any sufficient cause for condoning the delay. It is seen that the petition lacks bona fides and gross negligence on the part of the petitioner. The delay is very huge and deliberate and the affidavit is not properly pleaded, convincing and acceptable and the explanation for condoning the delay is also not satisfactory and he would seek for dismissal of the petition. In support of his contention, the learned



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counsel for the respondent would draw the attention of this Court to the judgments of this Court in Mrs.Zulaiha Syed Mohideen, rep., by her Power of Attorney Agent Shahul Hameed Vs. D.Visalakshi Ammal (deceased) and others (2013 (5) Law Weekly 791) and Baljeet Singh (Dead) through legal representatives and others Vs. State of Uttar Pradesh and others ((2019) 15 Supreme Court Cases 33).

6.Heard the learned counsel appearing on both sides and perused the materials available on record.

7.This petition has been filed to condone the delay of 1367 days in filing the second appeal. It is the case of the petitioner that the due to viral spread of Covid-19, he has not moved the appeal in time. It is seen that the appellate Court had delivered the judgment on 10.04.2019 in A.S.No.81 of 2018 which is the contested appeal. As the Courts were closed due to Covid-19 pandemic from 23.03.2020 and that Courts were re-opened only from June, 2021, he is unable to move the Court. Other than Covid-19 is the reason for the delay, nothing has been pleaded in the affidavit. The petitioner has stated that the appeal has been filed through High Court Legal Services



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Authority, Chennai, whereas it is the case of the respondent that the petitioner is running a Cable TV Network under the name and style of “Iyarkai” at Ariyankuppam, Pondicherry, and he had means to pay the Court fee, but he paid only Rs.30/- towards Court fee in each circumstance to earn sympathy of the Court by projecting himself to be short of funds. In this context, the Apex Court, in Baljeet Singh (Dead) through legal representatives and others Vs. State of Uttar Pradesh and others ((2019) 15 Supreme Court Cases 33) while dealing with the similar matter, has held as under.

“7. The matter requires examination from another aspect, viz., laches and delay. It is a very recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases, courts have coined the doctrine of laches and delay as well as doctrine of acquiescence and non-suited the litigants who approached the court belatedly without any justifiable explanation for bringing the action after unreasonable delay. In those cases, where the period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period, the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is



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over, however, subject to the prayer for condonation of delay and if there is a justifiable explanation for bringing the action after the prescribed period of limitation is over and sufficient cause is shown, the court may condone the delay. Therefore, in a case where the period of limitation is prescribed and the action is not brought within the period of limitation and subsequently proceedings are initiated after the period of limitation along with the prayer for condonation of delay, in that case, the applicant has to make out a sufficient cause and justify the cause for delay with a proper explanation. It is not that in each and every case despite the sufficient cause is not shown and the delay is not properly explained, the court may condone the delay. To make out a case for condonation of delay, the applicant has to make out a sufficient cause/reason which prevented him in initiating the proceedings within the period of limitation. Otherwise, he will be accused of gross negligence. If the aggrieved party does not initiate the proceedings within the period of limitation without any sufficient cause, he can be denied the relief on the ground of unexplained laches and delay and on the presumption that such person has waived his right or acquiesced with the order. These principles are based on the principles relatable to sound public policy that if a person does not exercise his right for a long time then such right is non-existent.”

8. Having considered the averments made in the petition for



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condonation of delay, this Court is of the view that the reasons assigned in the affidavit filed for seeking condonation of delay have not been properly explained and the reasons assigned are not convincing and acceptable and the petitioner has not shown sufficient cause for condoning such huge delay of 1367 days and the Civil Miscellaneous Petition in CMP No.9889 of 2023 is dismissed.

9. Further, on going through the records, this Court is also able to see that there is no substantial question of law involved for admitting the second appeal also. Consequently, the second appeal filed in S.A. SR. No.41493 of 2023 is also dismissed. No costs.

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A.D.JAGADISH CHANDIRA.,J.

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