



C.M.P.No.7893 of 2023
in SA.SR.No.19912 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

C.M.P.No.7893 of 2023
in S.A.SR.No.19912 of 2023

1. Kumarasamy Gounder

2. Paneerselvam

... Petitioners/Appellants

Vs.

1. Dhanalakshmi

2. G.Krishnaveni @ Kanmani

... Respondents

PRAYER: Civil Miscellaneous Petition filed under Order 41 Rule 3A r/w 42(1) of C.P.C., pleaded to condone the delay of 3748 days in filing the second appeal against the decree and judgement dated 09.11.2012, made in A.S.No.43 of 2011 on the file of the Sub Court, Dharapuram, confirming the decree and judgement dated 09.08.2011 in O.S.No.539 of 2007 on the file of the District Munsif Court, Dharapuram.

For Appellants : Mr.R.Nalliappan
for Mr.K.Sudhakar
For Respondents : Mr.M.Guruprasad



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ORDER

This miscellaneous petition has been filed seeking to condone the delay of 3748 days in filing the Second Appeal.

2. The appeal has been filed by the unsuccessful parties before the trial Court as well as before the appellate Court. The petitioners/appellants are respectively, the father and son and the respondents are the daughters of the first appellant. The original suit in O.S.No.539 of 2007 was filed by the respondents before the District Munsif Court, Dharapuram, Tirupur District seeking for partition of the properties. The trial Court had allowed and decreed the suit on 09.08.2011. Against which, the first appeal in A.S.No.43 of 2011 was filed by the petitioners/appellants before the Sub Court, Dharapuram, Tiruppur District and the first Appellate Court had also dismissed the first appeal by confirming the judgement and decree passed by the trial Court in O.S.No.539 of 2007. Aggrieved over the same, the present second appeal has been filed with delay.

3. In the Affidavit filed by the first petitioner/appellant, he had stated that the petitioners had asked the trial Court Counsel to take necessary



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steps to file second appeal and that the trial Court counsel also confirmed them that the appeal has been filed before the High Court and it was listed for admission and notice was also ordered to the respondents herein. It is the further case of the first appellant that since, he was suffering from amnesia and old age ailments, he was unable to follow the status of the appeal regularly. Later, he came to know that the counsel to whom papers were sent had passed away. Later, he had contacted the junior counsel and enquired about the status of the appeal in the month of February, 2020, whereas, the junior counsel was not able to give the details of the counsel who had filed the appeal and appeared on behalf of the petitioners/appellants before this Court. Hence, he was unable to get the correct status of the second appeal. Later, on verifying with the Registry of the High Court of Madras, he came to know that no appeal had been filed and thereby, he had filed the appeal with a delay of 3748 days and that the delay in filing the above second appeal is neither wilful nor wanton and had prayed for condoning the delay.

4. The respondents have filed a detailed counter. In the counter, it has been stated that the trial Court had decreed the suit in O.S.No.539 of 2007 by judgment and decree dated 09.08.2011 and aggrieved by the same,



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the respondents have filed the appeal suit in A.S.No.43 of 2011 on the file of the Sub Court, Dharapuram, Tiruppur District and the first appellate Court had also confirmed the judgment and decree passed by the trial Court by dismissing the appeal on 09.11.2012 and the petitioners have filed this appeal belatedly and have not shown any sufficient cause for condoning delay. Further, it is stated that no reasons have been assigned by the petitioners for condoning the long delay and that a concocted story has been put forth by them. It is further contended that the petitioners are none other than the father and brother of the respondents and the final decree proceedings in I.A.No.922 of 2016 is pending before the trial Court from the year of 2016 and the petitioners/appellants have been earnestly contesting the final decree proceedings at all stages. Though, it is stated by the petitioners/appellants that they have asked about the status of the second appeal to the junior counsel in the year 2020, the appeal has been filed much belatedly on 13.02.2023.

5. Mr.Nalliyappan, learned counsel representing Mr.K.Sudhakar, learned counsel for the petitioners/appellants submitted that the first petitioner/appellant is aged about 85 years and he is suffering from amnesia



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and due to his age related ailments, he was unable to follow the case properly. He further submitted that on the instructions of the lower Court counsel, bundles were sent to the counsel in the High Court and since there was no reply from the counsel, he had verified through the junior counsel during the year of 2020 and later, he came to know that the appeal was not filed and only after taking earnest steps, the second appeal has been filed during February 2023. He also submitted that the petitioners/appellants have shown sufficient cause for condoning the delay of 3748 days in filing the appeal. Thereby, he seeks for condoning the delay.

6. Mr.M.Guruprasad, learned counsel appearing for the respondents submitted that the petitioners/appellants have not shown sufficient cause for condoning the huge delay of 3748 days in filing the second appeal. He further submitted that though the Court has discretion to condone the delay, it has to be exercised judiciously based on facts and circumstances of each case and that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the party. He further submitted that even though the limitation may harshly affect the rights of the party, it has be to applied with all its



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rigour when prescribed by the statute. He also submitted that the petitioners, knowing well, have been contesting the final decree proceedings and wilfully delaying the proceedings before the lower Court in order to prevent the respondents from enjoying the fruits of the decree which was granted by the trial Court on 09.08.2011. Learned counsel further submitted that the appeal suit in A.S.No.43 of 2011 filed by the petitioners/appellants was also dismissed by the first appellate Court on 09.11.2012 and the second appeal has been filed only in 2023. Thereby, he would seek for dismissal of the petition.

7. In support of his contention, the learned counsel for the respondents relied on the following judgements;

1. ***Basawaraj and another vs. Special Land Acquisition Officer*** reported in ***(2013)14 SCC 81***;
2. ***Majji Sannemma alias Sanyasiroa vs. Reddy Sridevi and others*** reported in ***(2021) SCC Online SC 1260***;
3. ***Vatchala vs. T.Paari*** reported in ***2023 (2) MWN (Civil) 283***.

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



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9. This petition has been filed to condone the delay of 3748 days in filing the second appeal. The petitioners are the unsuccessful defendants, who have been lost before the trial Court as well as the first appellate Court. The trial Court had decreed the suit in O.S.No.539 of 2007 by judgment and decree dated 09.08.2011 and against which, the petitioners had filed the first appeal before the Sub Court, Dharapuram in A.S.No.43 of 2011. The first appellate Court had also dismissed the first appeal on 09.11.2012, by confirming the judgment and decree passed by the trial Court. Subsequently, the respondents/plaintiffs have also initiated the final decree proceedings and the petitioners have also contesting the same, while so, the second appeal came to be filed with a delay of 3748 days. The following dates and events are relevant for deciding the petition.

<i>S.No.</i>	<i>Dates</i>	<i>Events</i>
01	19.12.2007	Suit for Partition filed by the Respondents/Plaintiffs in O.S.No.539 of 2007 on the file of the Learned District Munsif Court, Dharapuram.
02	09.08.2011	Preliminary Decree passed by the Trail Court, declaring the shares of the respondents /plaintiffs
03	25.08.2011	The Appellants herein filed an appeal under Order 41 Rule 1 and Section 96 of the CPC in A.S.No.43 of 2011 on the file of the Learned Subordinate Judge Dharapuram.



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<i>S.No.</i>	<i>Dates</i>	<i>Events</i>
04	09.11.2012	The First Appellate Court dismissed the appeal suit preferred by the appellants confirming the findings of the trial court.
05	April 2015	Final Decree Application was filed by the Respondents herein in I.A.No. 922 of 2016 in O.S.539 of 2007 for appointment of the Advocate Commissioner and division of properties under 26 Rule 13 of the CPC
06	17.03.2017	Appellants / Defendants after receipt of the summons in the final decree proceedings, engaged a counsel and filed their counter statement in I.A.No.922 of 2016
07	11.04.2017	Respondents/ plaintiffs side enquiry was over for the appointment of the Advocate Commissioner
08	24.07.2017 20.06.2017 21.04.2017 23.08.2017	The IA was adjourned to various dates for the enquiry of the Appellants / Defendants
09	19.09.2017	Final Decree Proceedings were adjourned as Last Chance to the appellants / defendants
10	31.10.2017	No representation for Appellants /Defendants adjourned for orders
11	09.11.2017	No representation for Appellants /Defendants adjourned for orders
12	24.11.2017	No representation for Appellants /Defendants adjourned for orders
13	04.12.2017	Orders passed. One Mr.V.R.Prabakaran advocate was appointed as an Advocate Commissioner
14	08.01.2018	CRP pending at request respondents adjourned
15	08.02.2018	CRP pending at request respondents adjourned
16	15.03.2018	Hon'ble Judge Transfer
17	19.04.2018	At request adjourned
18	19.06.2018	CRP pending at request Appellants/Defendants



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S.No.	Dates	Events
		adjourned
19	24.07.2018	CRP pending at request of Appellants/Defendants adjourned
20	15.12.2022	The Advocate Commissioner filed his report and plan in I.A.No.922 of 2016
21	12.01.2023	Posted for Appellants/Defendants side objections
22	13.02.2023	Second Appeal filed by the Appellants / Defendants challenging the Judgment and Decree passed in A.S.No.43 of 2011 on the file of the Learned Subordinate Judge, Dharapuram with an inordinate delay of 3748 days
23	27.02.2023	Posted for Appellants/Defendants side objections
24	28.03.2023	Respondents/ Plaintiffs side Enquiry in I.A. No. 922 of 2016
25	11.04.2023	Appellants /Defendants side Enquiry in I.A. No. 922
26		Since the Second Appeal has been preferred at request of Appellants/ Defendants, I.A. No. 922 of 2016 adjourned to 21.08.2023

10. The Apex Court, in **Majji Sannemma alias Sanyasiroa vs. Reddy Sridevi and others** reported in **(2021) SCC Online SC 1260**, has held as under :

"20. In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be



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liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

21. In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".

22. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application



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for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos. 1 and 2 herein - appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos. 1 and 2 herein original defendants. Impugned order passed by the High Court is - unsustainable both, on law as well as on facts."

11. Having considered the averments made in the affidavit filed in support of the petition for condonation of delay, this Court is of the view that the reasons assigned have not been properly explained and they are not convincing and acceptable and the petitioner has not shown sufficient cause for condoning such huge delay of 3748 days and the Civil Miscellaneous Petition is dismissed.



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12. 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 is also dismissed in the SR stage itself. No costs.

31.07.2023

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Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No

To

1. The District Munsif Court, Dharapuram.
2. The Sub Court, Dharapuram.
3. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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