



WEB COPY



C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

A.D.JAGADISH CHANDIRA, J.

This Miscellaneous Petition has been filed seeking to condone the delay of 2138 days in filing the Second Appeal against the judgment and decree passed by the Sub Court, Ariyalur, in A.S.No.39 of 2007 dated 06.01.2012, confirming the decree and judgment passed by the District Munsif Court in O.S.No.119 of 2004 dated 23.09.2005.

2. It is the case of the petitioner that the Sub Court, Ariyalur had dismissed the Appeal Suit filed by the petitioner in A.S.No.39 of 2007 vide order dated 06.01.2012 by confirming the Decree and Judgment passed by the trial Court in O.S.No.119 of 2004 dated 23.09.2005. It is the further case of the petitioner that he was unable to contact his Advocate as he was suffering from Leucoderma and due to that he was both physically and mentally affected and after recovery, he contacted his counsel in the lower Court and instructed him to prefer a Second Appeal. Meanwhile, the back papers in O.S.No.119 of 2004 along with the bundle of A.S.No.39 of 2007 were also misplaced in his Advocate's office and subsequently, there was a Covid Pandemic and thereby, there had been a



C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

delay of 2138 days in preferring the Second Appeal. It is also stated that the delay in filing the Second Appeal is neither wilful nor wanton but only due to the aforesaid reasons.

3. The respondent has filed a Counter Affidavit objecting to condoning the delay, contending that the petitioner has not shown any valid and sufficient cause for condoning the huge delay.

4. Learned counsel for the petitioner submitted that the petitioner is the defendant in the suit filed by the respondent/plaintiff for specific performance and it is the case of the respondent/plaintiff that the petitioner had entered into an agreement for sale, whereas, it is the case of the petitioner/defendant that a sham agreement of sale was entered into for the purpose of security in a loan transaction. In this case, although the sale consideration was fixed at Rs.50,000/-, an advance amount of Rs.45,000/- was stated to be settled on the same day of the agreement and a one-year time period was fixed for payment of the remaining nominal balance of Rs. 5,000/-, thereby, raising a doubt. He further submitted that the petitioner, after dismissal of the first appeal, was affected by Leucoderma, due to which, he was physically and mentally affected and subsequently, on account of



C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

Covid pandemic, he was unable to contact his Advocate. Further, the case bundles have also been misplaced by his counsel and thereby, there had been a delay in filing the Second Appeal within the stipulated time. He further submitted that the appellant has also got a good case on merits. Hence, he seeks to condone the delay of 2138 days in filing the second appeal.

5. Learned counsel for the respondent, though initially objected for condoning the delay, later on submitted that she has no objection in any order being passed by this Court.

6. Heard the learned counsel appearing on both sides and perused the affidavit filed by the petitioner.

7. It is seen that the petition has been filed seeking to condone a huge delay of 2138 days. Normally, this Court will not condone such huge delay of 2138 days, whereas, in this case, the petitioner/appellant craves indulgence of this Court by contending that he suffered severe illness on account of Leucoderma and he was affected both physically and mentally. Further, it is the case of the petitioner that the bundles were also misplaced in the office of the Advocate and



C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

on account of Covid pandemic, he was unable to file the Second Appeal within the stipulated time. While this being so, when the matter was taken up on 24.07.2023, this Court, had directed the petitioner/appellant to appear before this Court and pursuant to which, the petitioner/appellant appeared on 16.08.2023 and this Court, had personally seen the pathetic condition of the petitioner/appellant.

8. In the Judgment M.K. Prasad v. P. Arumugam reported in (2001) 6 SCC 176, it has been held as under in para 9.

9. Again in State of W.B. v. Administrator, Howrah Municipality and G. Ramegowda Major v. Special Land Acquisition Officer this Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it. Again in N. Balakrishnan v. M. Krishnamurthy this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant, in the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the court should normally condone the delay....

9. In light of the above decision and taking into consideration the facts and circumstances of the case and the pathetic condition of the



C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

petitioner/appellant, this Court is satisfied that the petitioner has shown sufficient cause for condoning the delay in filing the second appeal, this miscellaneous petition is ordered and the delay of 2138 days in filing the Second Appeal is condoned.

20.09.2023

ham

Note : Registry is directed to number the main appeal,
if it is, otherwise, in order.



WEB COPY



C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

A.D.JAGADISH CHANDIRA, J.

ham

***C.M.P.No.18837 of 2021
in
S.A.SR.No.49363 of 2019***



WEB COPY



C.M.P.No.18837 of 2021
in S.A.SR.No.49363 of 2019

20.09.2023