



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.M.P.No.15258 of 2022
in S.A.SR.No.95859 of 2022

Paulina .. Petitioner/Appellant
Vs.

1. Vimala Josephine
Sr.Assistant, Tamil Nadu
State Transport Corporation,
Villupuram Division,
Rangapuram,
Vellore, Vellore Division Officers Line,
Vellore-1.
2. The Senior Superintendent of Post Officer,
Vellore Division, Officers Line,
Vellore-1,
Vellore District.

.. Respondents/Respondents

Prayer:- Condone Delay petition filed under Section 41 Rule 3A r/w under Section 42 Rule 1 of CPC to condone the delay of 2925 days in filing the Second appeal and pass such further other order or orders may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.R.Govindasamy
For R1 : Mr.T.Kalaiselvan
For R2 : Mr.K.Gangadaran



ORDER

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This petition has been filed to condone the delay of 2925 days in filing the second appeal.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for mandatory injunction and permanent injunction, and directing the second respondent herein to pay family pension to the petitioner and restrained the second respondent from paying any family pension in favour of the first respondent. The petitioner claims to be the wife of one Mariyaselvam. According to her, she got married with one Mariyaselvam on 01.07.1980, as per the Christian rights and customs at Vellankanni Church. Thereafter, due to their wed lock, they gave birth to three children. Her husband was working in postal department and he got voluntary retirement on 30.08.1999. The entire terminal benefits was received by him and he died on 15.09.2008. The petitioner obtained legal heirship certificate from the Tahsildar and made a representation before the second respondent requesting to grant family pension to her by producing the legal heirship certificate and other documents. However, the first respondent claimed to be the wife and as such the petitioner filed a suit. The said suit was dismissed and aggrieved by the same, she preferred an appeal suit and the appeal suit was also dismissed by the



Judgment and Decree dated 05.03.2014. However, the petitioner failed to prefer this appeal in time. She preferred this appeal after a period of 2925 days.

3. A perusal of the affidavit filed in support of the condone delay petition revealed that the petitioner had faced many difficulties to meet day-to-day amenities. She is facing untold miseries and suffered hardships without any family support. Her son is working at Bangalore in a private company and as such she had shifted her residence from Katpadi to Bangalore, during the year 2013. She is having continuous health issues and as such she is away from her permanent residence. Therefore, she could not meet her counsel and ascertain about the status of the case. Only now, she came to understand about the dismissal of the appeal suit and accordingly, instructed her counsel to obtain certified copy of the Judgment and Decree passed in A.S.No.34 of 2012 on the file of the Sub-ordinate Court, Vellore. After obtaining the certified copy of the Judgment and Decree, she preferred this second appeal. When the appellant herself is facing untold miseries and suffered hardship without any family support, she would have been vigilant about the case filed by her, since her suit was dismissed by the Trial Court claiming for family pension. She filed an appeal suit and she did not care about the appeal suit and she did not take any steps to know the result of the appeal suit, since it was dismissed as early as on



05.03.2014. If at all, she is really suffering with financial crises, definitely she would have known the status of the appeal suit. Though, the petitioner stated that she was suffering from illness, there is absolutely no document produced by her to prove the same. All the reasons are vague and bald and it is not a bonafide one. Though, the Hon'ble Supreme Court of India repeatedly held that the condone delay petition should be dealt leniently, it is completely discretion of the Court. There must be bonafide reasons to condone the delay.

4. In the case on hand, the number of days i.e., 2925 days delay in filing the second appeal is huge. The reasons stated by the petitioner is also not a bonafide one. That apart, the petitioner has no merit in the present second appeal. She did not produce any evidence to prove that she is a legally wedded wife. Whereas, the first respondent herein produced the extract from the register of marriage between the first respondent and the deceased Mariyaselvam, which was marked as Ex.B1. The extract is from the register of Baptism of Vanitha Immaculate dated 28.07.2008, which was marked as Ex.B2. Therefore, the petitioner also failed to prove her case and as such the Courts below rightly dismissed the suit. Therefore, this Court is not inclined to condone the delay of 2925 days in filing the second appeal.



5. Accordingly, this Civil Miscellaneous petition is dismissed. The

S.A.SR.No.95859 of 2022 is also rejected at the SR stage itself. No costs.

02.02.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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