



CMP.No.8733 of 2022
in SA.SR.NO.115015 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

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

CMP.No.8733 of 2022
and SA.SR.No.115015 of 2021

Samiyathal

..Petitioner

Vs.

1.Arukkani
2.Ravi
3.Selvi
4.Raju
5.Radhamani

..Respondents

Prayer: Civil Miscellaneous Petition filed under Order IV Rule 9(4) of A.S Rules, to condone the delay of 1323 days in filing the above appeal before this Court against the judgment and decree dated 07.04.2017 made in A.S.No.59 of 2012 on the file of the Sub-Court, Dharapuram, confirming the judgment and decree dated 20.12.2011 made in O.S.No.5 of 2009 on the file of the District Munsif Court, Kangayam.

For Petitioner : Mr.N.Manoharan

For Respondents

For R1 to 4 : Mr.P.Navaneetha Krishnan



CMP.No.8733 of 2022
in SA.SR.NO.115015 of 2021

ORDER

WEB COPY

The civil miscellaneous petition has been filed to condone the delay of 1323 days in filing the above second appeal against the judgment and decree dated 07.04.2017 made in A.S.No.59 of 2012 on the file of the Sub-Court, Dharapuram, confirming the judgment and decree dated 20.12.2011 made in O.S.No.5 of 2009 on the file of the District Munsif Court, Kangayam.

2. The petitioner is the plaintiff and the respondents are the defendants in the suit filed by the petitioner. She filed the suit for partition in O.S.No.5 of 2009, claiming her share in the suit schedule property. However, the said suit was dismissed by the District Munsif Court, Kangayam. Aggrieved by the same, she filed an appeal suit and the same was also dismissed by the Sub-Court, Dharapuram. Aggrieved by the same, the present second appeal has been filed with a delay of 1323 days in filing the above said second appeal and seeks to condone the said delay.

3. On a perusal of the affidavit filed in support of this condone delay petition, it is seen that she filed an appeal suit and the same was dismissed on 20.12.2011. A copy application was made on 10.04.2017, and stamps were



CMP.No.8733 of 2022
in SA.SR.NO.115015 of 2021

called for and deposited on 17.01.2018. Thereafter, copies of the judgment and decree were made ready on 05.02.2018. However, the same were received by the appellant only on 06.03.2018. Thereafter, she made arrangements to file this second appeal only on 20.12.2021. She is a poor lady and rustic villager. She had no mean or financial sources to file this appeal in time. She further averred that she is a daily coolie and a widow. After demise of her husband, she has been forced to face the financial burden of her family. Therefore, she could not make arrangements to file this appeal in time. She could not even meet out the minimum expenditure of filing this appeal and as such, with the help of the learned counsel, she has filed this appeal now with a delay of 1323 days. Therefore, the delay is neither wanton nor willful.

4. The learned counsel for the petitioner submitted that the petitioner has got a very good case to succeed in the second appeal. The Trial Court dismissed the suit on the ground that the petitioner failed to prove her birth to one Kumaran, claiming share in the suit schedule property. However, in the Appellate Court, she produced the Death Certificates of her father and mother and also Birth Certificates of her brother and herself. Even then the First Appellate Court failed to consider the same and dismissed the Appeal Suit.



CMP.No.8733 of 2022
in SA.SR.NO.115015 of 2021

WEB COPY

5. On a perusal of findings of the lower Appellate Court, it revealed that the Birth Certificate produced by the petitioner is not a genuine one, since the name mentioned in the Birth Certificate itself differs in respect of the petitioner as well as her brother. That apart, according to the petitioner, she was born on 28.06.1948 and subsequently, it was registered as 29.06.1948. The office of the Sub-Registrar, Vellakoil, was not constituted and there was no such Registrar Office at Vellakoil, at that time. Therefore, the lower Appellate Court did not believe the additional documents produced by the appellant and dismissed the Appeal Suit.

6. Further, while considering the condone delay petition filed with a huge delay of 1323 days in filing the appeal, this Court has to exercise its discretion very judicially. The discretion to condone the delay has to be exercised judicially based on the facts and circumstances of each case. The expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bonafides is attributed to the party. Even though limitation may harshly affects the rights of a party, but it has to be applied with all its rigour, as prescribed by the statute. In case, a party has acted with negligence, lack of



CMP.No.8733 of 2022
in SA.SR.NO.115015 of 2021

bonafides or there is inaction, then there cannot be any justified ground for condoning the delay, even by imposing conditions. Therefore, if the Courts start condoning the delay, where no sufficient cause is made out by imposing conditions, then it would amount to violation of statutory principles and showing utter disregard to Legislature.

7. All the reasons stated by the petitioner are bald and vague and there is no specific reasons for the huge delay and there is no specific reasons stated in her affidavit for condoning the huge delay.

8. In view of the above and for the reasons stated supra, the petitioner does not have any merit in the second appeal to succeed. Therefore, this Court is not inclined to condone the delay.

9. Accordingly, the civil miscellaneous petition stands dismissed and the S.A.SR.No.115015 of 2021 is hereby rejected.

16.02.2023

Speaking/Non-speaking order

Index : Yes/No

ata



WEB COPY



CMP.No.8733 of 2022
in SA.SR.NO.115015 of 2021

G.K.ILANTHIRAIYAN.J,

ata

CMP.No.8733 of 2022
and SA.SR.No.115015 of 2021

16.02.2023