



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2023

CORAM

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

C.M.P.No.24734 of 2019
in S.A.SR.No.113216 of 2019

1. Natesan @ Marappan
2. M.Palani

.. Petitioners/Appellants

Vs.

P.Rangarajan

.. Respondent/Respondent

Prayer:- Condone Delay petition filed under Section 41 Rule 3A r/w under Order 42 Rule 1 of CPC to condone the delay of 2283 days in filing this appeal and pass such further other suitable orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.P.Srinivasan
for M/s S.Sujatha
For Respondent : Mr.J.Pradeep

ORDER

This petition has been filed to condone the delay of 2283 days in filing the second appeal.

2. The petitioners are the defendants in the suit filed by the respondent for specific performance. The said suit was decreed by the Judgment and decree dated 31.07.2012. Aggrieved by the same, the petitioners filed an appeal suit in



A.S.No.37 of 2012 and the same was also dismissed by the Judgment and Decree dated 26.02.2013. However, the petitioners failed to prefer any appeal suit in time and there is a delay of 2283 days in filing the second appeal.

3. The learned counsel for the petitioners submitted that the counsel on record Mr.S.B.Suresh died in the year 2020 itself. Therefore, Mr.P.Srinivasan has appeared on behalf of the petitioners.

4. Heard both sides.

5. A perusal of the affidavit filed in support of the condone delay petition revealed that second petitioner filed a sworn affidavit and stated that he is a poor farmer and he cannot contact his lower Court counsel due to his financial problem. His counsel also did not inform the order of dismissal. He informed that the bundle has been misplaced when they were shifting their office. Only now, the bundle was found and handed over to the petitioner.

6. A perusal of the Judgment and Decree passed in appeal suit revealed that it was dismissed on 26.02.2013. Immediately, on 28.02.2013, the copy application was made for certified copies of Judgment and decree. It was made



ready on 03.04.2013 and delivered to the counsel on 04.04.2013. Therefore, there is no mistake on the part of the counsel who appeared before the first appellate Court and he promptly applied for certified copies of the Judgment and Decree and also received the same on 04.04.2013.

7. That apart, the respondent filed a suit for specific performance and the same was decreed in his favour. After dismissal of the appeal suit, the respondent filed an execution petition in R.E.P.No.8 of 2013 in which the petitioners appeared before the execution Court and also filed their counter as early as on 29.07.2013. Therefore, the petitioners had knowledge about the dismissal of the appeal suit, when they were served with the notice in R.E.P.No.8 of 2013. Thereafter, the execution petition was ordered and the sale deed was executed by the execution Court in favour of the respondent, as early as on 27.11.2014.

8. Therefore, the reasons stated in the affidavit is completely false and those are not sufficient reasons to condone the huge delay of 2283 days in filing the second appeal. Therefore, this Court is not inclined to condone the delay of 2283 days in filing the second appeal.



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

S.A.SR.No.113216 of 2019 is also rejected at the SR stage itself. No costs.

24.02.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

mn

G.K.ILANTHIRAIYAN,J.



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