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C.M.P.No.22570 of 2022
and
S.A.SR.No.136030 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**C.M.P.No.22570 of 2022
and
S.A.SR.No.136030 of 2022**

Ramaraj

... Petitioner

Vs.

1. Thiyagarajan

2. Rajagopal

... Respondents

Prayer in C.M.P.No.22570 of 2022: Civil Miscellaneous Petition filed under Section 151 of the Civil Procedure Code, praying to condone the delay of 3940 days in filing the above second appeal against the decree and judgement dated 10.11.2011 passed in A.S.No.102 of 2011 on the file of the Principal District Judge, Namakkal reversing the decree and judgement dated 17.03.2011 passed in O.S.No.299 of 2008 by the Sub Judge, Rasipuram.

Prayer in S.A.SR.No.136030 of 2022: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the decree and judgment dated 10.11.2011 passed in A.S.No.102 of 2011 on the file of the Principal District Judge, Namakkal reversing the decree and judgement dated 17.03.2011 passed in O.S.No.299 of 2008 by the Sub Judge, Rasipuram.



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For Petitioner : Mr. S.Prabakaran,
Senior Counsel for
Mr. R.Nalliyappan

For Respondents : Mr. L.Rajendran

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 3940 days in filing the above Second Appeal.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for specific performance in respect of the suit property. The trial Court decreed the suit by judgement and decree dated 17.03.2011. Aggrieved by the same, the respondents filed an appeal before the Principal District Judge, Namakkal and the same was allowed, reversing the findings of the trial Court and dismissed the suit by judgment and decree dated 10.11.2011. Aggrieved by the same, the appellant filed the second appeal with a delay of 3940 days.

3. The learned Senior Counsel appearing for the petitioner submitted that certified copy of the judgement and decree passed in the appeal suit was obtained in the month of October 2012 and both the judgement and decree



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were sent to the counsel before this Court in order to file the second appeal.

However, the said counsel did not prefer the second appeal and he was suffered by illness and as such, he could not look after the second appeal. After verifying with the lower Court's counsel, the petitioner found that no appeal was filed as against the judgement and decree passed by the Appellate Court. Thereafter, once again, the petitioner obtained certified copy of the judgement and decree in the appeal suit on 28.09.2022 and filed the present second appeal. Therefore, there was a delay of 3940 days in filing the present second appeal. The said delay occurred due to unexpected incident and it is neither willful nor wanton, which is the only reason stated in the affidavit filed in support of the condone delay petition.

4. On a perusal of the records, it reveals that the petitioner filed the suit for specific performance on the strength of the agreement of sale dated 09.07.2007 and as per the said agreement, the total sale consideration was fixed at Rs.2,38,820/- and a sum of Rs.50,000/- was received as advance and the date fixed for balance sale consideration and execution of sale deed as 16.11.2007. However, though the petitioner was ready and willing to perform his part of contract, the respondents did not come forward to receive the same and failed to execute the sale deed. Thereafter, on 16.11.2007, the petitioner



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caused notice and initiated suit for specific performance. Though the trial Court decreed the suit, the Appellate Court dismissed the suit on the ground that already, the petitioner filed another suit for specific performance in O.S.No.140 of 2008 on the strength of another agreement for sale on the file of the District Munsif Court, Rasipuram. In the said suit, he had categorically deposed that he mortgaged his lorry bearing Registration No.TN.27/Q1314 and in order to purchase the said lorry, he mortgaged the said lorry with one Velmurugan Investment, Namakkal. Therefore, he had money only to purchase the said lorry and he has no other source of income in order to purchase the suit property as per the agreement for sale.

5. Therefore, the petitioner failed to prove his readiness and willingness to purchase the suit property. Hence, the Appellate Court rightly dismissed the appeal suit and directed the respondents to deposit the advance amount fixed, which was received by them within a period of one month. Accordingly, the respondents also deposited the advance amount to the credit of the suit. After dismissal of the Appeal Suit, the respondents had sold out part of the suit property in favour of third party and also constructed a house in the remaining property. Therefore, no purpose would be served if the condone delay petition is allowed, since no specific performance can be issued in the suit filed by the



petitioner.

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6. That apart, the reasons stated in the accompanying affidavit are not sufficient to condone the huge delay of 3940 days in filing the present second appeal. Though the petitioner stated that he had already handed over the bundle to file the second appeal as against the judgement and decree passed by the appellate Court, nowhere there is a mention about the date of sending the bundle and when they verified with the counsel engaged before this Court. Therefore, this Court is not satisfied with the reasons stated in the condone delay petition and as such, this Court is not inclined to allow the condone delay petition.

7. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, S.A.SR.No.136030 of 2022 is rejected. No costs.

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Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN,J.

Kv

To

1. The Principal District Judge, Namakkal.
2. The Sub Judge, Rasipuram.
3. The Section Officer,
V.R. Section, High Court of Madras.

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