



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twelfth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice ABDUL QUDDHOSE

CMP(MD) No.3667 of 2023
and
SA(MD) SR No.4679 of 2023

JOSEPH VINCENT RAJA

... Petitioner / Appellant

Vs

EBINEZAR JOSEPH

... Respondent / Respondent

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 235 days in filing the above second appeal.

Prayer in SA(MD) SR No.4679 of 2023:

To set aside the Decree and Judgment of the First Additional Sub Court, Tiruchirappalli in A.S.No.150 of 2013 dated 25.09.2019 by confirming the Decree and Judgment of the First Additional District Munsif, Tiruchirappalli in O.S.No.726 of 2001 dated 15.07.2013 by allowing this Second appeal with costs.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.VEDAVALLI, Advocate for the petitioner and of Mr.R.SUNDARSRINIVASAN, Advocate for the Respondent, the court made the following order:-

This application has been filed to condone the delay of 235 days in filing the Second Appeal.

2. The petitioner is the defendant in the suit. The suit was filed by the respondent/plaintiff for declaration, mandatory injunction and for recovery of possession. The Trial Court dismissed the suit. However, the Lower Appellate Court reversed the findings of the Trial Court by allowing the first appeal filed by the plaintiff. However, the Second Appeal has not been filed on time by the petitioner/defendant and there is a delay of 235 days in filing the same.

3. The petitioner has stated that he was suffering from diabetes and high blood pressure and on account of the same, he has



been taking continuous treatment. He has also stated that a domestic problem with his son who is giving him trouble. Due to the aforesaid reason, the petitioner states that he was unable to contact his counsel to file the Second Appeal on time.

4. However, the learned counsel for the respondent would submit that the reasons given by the petitioner in the affidavit filed in support of this application seeking to condone the delay of 235 days in filing the Second Appeal are all false. He vehemently opposes the condonation of the delay. This Court had directed the respondent to file his counter in this application and in fact, the matter has been listed for counter and disposal today. The learned counsel for the respondent submits that the counter will be filed if one more adjournment is granted.

5. However, after giving due consideration to the reasons stated in the affidavit filed in support of this application for the delay in filing this Second appeal and after giving due consideration to the fact that the petitioner is aged 61 years and being reversal findings, this Court is inclined to allow this application despite the fact that the learned counsel for the respondent has vehemently opposed the allowing of this application. However, the petitioner must be put on terms for condoning the delay of 235 days in filing this Second Appeal. Accordingly, this Civil Miscellaneous Petition is allowed as prayed for subject to the condition that the petitioner deposits a sum of Rs.1500/- (Rupees One Thousand and Five Hundred only) as cost to M.S.Chellamuthu Trust and Research Foundation, Alagarkovil, Madurai (Account No.11194450660, IFSC Code-SBIN0001479, State Bank of India, Vinayaganagar Branch, No.8, Dr.Ambedkar Road, Madurai-20), within a period of one (1) week from the date of receipt of a copy of this order. On production of the proof for having made the aforesaid payment within the stipulated time, Registry is directed to number the Second Appeal, if it is otherwise in order and list the same for admission by printing the name of Mr.R.Sundarsrinivasan as learned counsel for the respondent in the cause list.

sd/-
12/06/2023

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/06/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

LM

To

1.The I Additional Sub Judge,

<https://www.mhcb.in> Madurai.



2.The I Additional District Munsif,
Tiruchirappalli.

Copy to:

1.The Officer Incharge,
M.S.Chellamuthu Trust and Research Foundation,
Alagarkovil, Madurai.

2.The Sub Assistant Registrar,
AE Section,
Madurai Bench of Madras High Court, Madurai.

3.The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CMP (MD) No.3667 of 2023
and
SA (MD) SR No.4679 of 2023
Date :12/06/2023

ED/BUC/SAR- (15/06/2023) 3P 6C