



WEB COPY

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

Thursday, the Fourteenth day of September Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI
CMP(MD) No.4327 of 2023
in
SA(MD)SR.No.10500 of 2023

S.PALANICHAMY

... PETITIONER/PETITIONER

Vs

KALA

... RESPONDENT/RESPONDENT

Civil Miscellaneous 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 701 days in filing the Second Appeal against Judgement and Decree in A.S. No. 12 of 2015 dated 07.01.2019 on the file of the Mahila Court, Dindigul.

PRAYER in SA(MD)SR.No.10500 of 2023:

To set aside the Judgment and Decree dated 07.01.2019 passed in A.S.No.12 of 2015 on the file of the Mahila Court, Dindigul, confirmed against the Judgment and decree dated 12.12.2013 passed in O.S.No.322 of 2009 on the file of the Additional Sub Court, Dindigul and allow this second appeal.

ORDER : This Civil Miscellaneous 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.R.RAMADURAI, Advocate for the petitioner and of Mr.C.V.K.M.GOPINATH, Advocate on behalf of the Respondent, the Court made the following order:-

Reserved on : 11.08.2023
Pronounced on : 14.09.2023

This Civil Miscellaneous Petition is filed to condone the delay of 701 days in filing Second Appeal against the order dated 07.01.2019 made in A.S.No.12 of 2015 on



the file of the Fast Track Mahila Court, Dindigul.

WEB COPY

2. The petitioner has stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The respondent filed a suit for specific performance in O.S.No.322 of 2009 on the file of the Additional Sub Court, Dindigul. The petitioner contested the suit by filing a detailed written statement. After adducing evidence by both parties and after hearing both, the Trial Court has decreed the suit on 12.12.2013. The petitioner preferred the appeal in A.S.No.12 of 2015 before the Fast Track Mahila Court, Dindigul. The said appeal was dismissed on 07.01.2019. The petitioner was under ailment for his disease and thereafter covid-19 pandemic intervened. The said delay is neither willful nor wanton. If the delay is not condoned the petitioner will be put to irreparable loss and hardship. Hence, the delay may be condoned.

3. The respondent filed a counter and objected the petition and stated as follows:

The petitioner has wantonly filed this petition, which is not maintainable in law. The petitioner knew about the suit proceedings and execution proceedings and the petitioner was directed to register the sale deed in the execution proceedings. In this circumstance, the petitioner filed this petition with false averments to condone the delay of 701 days in filing the Second Appeal.



4. Heard both side and perused the records in this Civil Miscellaneous Petition.

5. The respondent has filed a suit in O.S.No.322 of 2009 on the file of the Additional Sub Court, Dindigul against the petitioner and the said suit was decreed. Aggrieved by the same the petitioner preferred an appeal in A.S.No.12 of 2015, which was also dismissed. Hence, the petitioner is before this Court.

6. The learned counsel for the petitioner argued that the petitioner availed loan of Rs.1,00,000/- from the respondent and he has not executed any agreement of sale as alleged by the respondent. It is fishy transaction that the respondent alleged that on the date of sale agreement 90% of sale consideration was paid and only 10% alone to be paid. After dismissal of appeal, the petitioner was suffering from high pressure and sugar level increased and so he took treatment. Further, the Hon'ble Supreme Court issued guidelines for calculation of covid-19 pandemic period. The Courts are enabled to do substantial justice to parties by disposing the matters on merits as per enactment of Limitation Act. The petitioner has shown sufficient cause for the delay. In support of his argument, the learned counsel for the petitioner relied on the following citations:

(1) AIR 1987 Supreme Court 1353 (Collector, Land Acquisition, Anantnag and Anr. Vs. Katiji and Ors.) wherein, the Hon'ble Supreme Court has held in paragraph No.3 as follows:



WEB COPY

“3. The legislature has conferred the power to condone the delay by enacting section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’.....”.

2) (2000) 9 Supreme Court Cases 733 (Radha Krishna Rai Vs. Allahabad Bank And Ors.) wherein, the Hon'ble Supreme Court has held in paragraph No.6 as follows:

“6. On the facts, we are of the view that though the period of delay is unduly long, the circumstances are also very unusual. The petitioner has been a victim of misrepresentation of facts by his own advocate and was kept under the impression that the appeal is pending before High Court whereas no appeal was in fact filed by the advocate. It cannot be said that the appellant has not been vigilant in prosecuting the appeal. The cause shown by the petitioner is sufficient to justify condoning the delay in filing the appeal.....”.

7. The learned counsel for the respondent contended that the petitioner failed to succeed in Courts below and filed this appeal with delay against the concurrent findings. The petitioner knew very well about the execution proceedings filed by the respondent and when he was directed to execute the sale deed, he has filed this Second Appeal with delay with false averments. Hence, the petition is to be dismissed.



WEB COPY

8. On perusal, the petitioner contested the suit and first appeal, but both proceedings ended against the petitioner. The petitioner states that due to his ailment as he was suffering from high blood pressure and diabetes he could not meet his counsel in time and secure the certified copy of judgment passed in appeal. The petitioner further states that when she obtained certified copies of the judgments Covid-19 pandemic prevailed. On perusal of counter affidavit, the respondent has not raised strong objection except that the petitioner has not explained acceptable reasons and to drag the proceedings the present petition is filed. It is settled principle that every litigant has right to prefer the appeal and mere delay or long delay, the right of appeal to a party should not be defeated. There are rival contentions of both parties regarding the subject suit property, the petitioner says loan transaction and the respondent says sale agreement transaction. The appeal in A.S.No.12 of 2015 was disposed on 07.01.2019. The respondent admits that the petitioner filed a copy application on 18.02.2019 for certified copies of judgment and decree to prefer Second Appeal, as could be seen from counter. So, the petitioner has immediately taken steps for filing the appeal. The Hon'ble Apex Court exempted Covid-19 pandemic period from 15.03.2020 to 28.02.2022. Considering the nature of suit and other facts and circumstances of the case, this Court is of the opinion that the petitioner has to be given an opportunity to prefer the Second Appeal and at the same time the



WEB COPY

inconvenience caused to the respondent has to be compensated. Considering the above facts and circumstances, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the respondent.

9. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay a cost of Rs.5,000/- (Rupees Five Thousand only) to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which, this petition shall stand automatically dismissed without further reference to this Court.

10. On such payment being made within the stipulated time, the Registry is directed to number the Second Appeal, if it is otherwise in order and list it for admission in the usual course.

sd/-
14/09/2023

/ TRUE COPY /

/09/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

TO

1 THE JUDGE,
MAHILA COURT, DINDIGUL.



WIB THE ADDITIONAL SUBORDINATE JUDGE, DINDIGUL.

COPY TO :

- 1 THE SUB ASSISTANT REGISTRAR, AE SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- 2 THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.C.V.K.M.GOPINATH, Advocate (SR-13739[I] dated 15/09/2023)

ORDER
IN
CMP(MD) No.4327 of 2023
in
SA(MD)SR.No.10500 of 2023
Date :14/09/2023

SS/DD/19/09/2023/7P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023