



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction



Thursday, the Nineteenth day of January
Two Thousand and Twenty Three

PRESENT

The Honourable Ms. Justice P.T. ASHA

CMP(MD). No.3162 of 2021
in
S.A.(MD).No.404 of 2015

M.A.Amrudeen, ... Petitioner/2nd Respondent

-Vs-

1 M.Syed Sulaiman,

2 M. Shahjahan,

3 M. Syed Kadhar,

4 M.Syed Ismail, ... 1 to 4 Respondents / Appellants

5 Samsudhin Mahaboob John, ... 5th Respondent/ 1st Respondent

Prayer in CMP(MD). No.3162 of 2021 in S.A.(MD).No.404 of 2015 :-

This Civil Miscellaneous petition filed U/s.5 of the Limitation Act to Condone the Delay of 98 days in filing the application seeking to Rehear the S.A.(MD).No.404 of 2015 on merits.

Prayer in S.A.(MD).No.404 of 2015 :-

This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree passed in A.S.No.67 of 2014 on the file of the Principal Sub Court, Thirunelveli dated 22.12.2014 confirming the Judgment and Decree passed in O.S.No,37 of 2009 on the file of the Principal District Munsif Court, Thirunelveli, dated 23.04.2014.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru./Ms. Mr.D.Srinivasaraghavan, for Mr.S.P.Maharajan, Advocate for the Petitioner and of Thiru./Ms. T.Selvan, Advocate for the Respondents 1 to 4, this Court made the following order:

The above application is filed for condoning the delay of 98 days in filing the application to rehear the Second Appeal.

2. The petitioner who is the second respondent in the



above Second Appeal has stated that he had not received any notice from this Court and that the signature in the acknowledgment card is not his signature. He had also gone on to state that his signature has been forged with the connivance of the postal officials. Therefore, he seeks to condone the delay of 98 days.

3. The counter affidavit has been filed and a strong objection has been taken to the statement that the signature has been forged by the appellant/respondent herein in the acknowledgment card and they had contended that the petitioner is very much aware about the above proceedings.

4. The learned counsel have also made the submission that the delay that is sought to be condoned is 98 days and the reason given is that the notice has not been received by the petitioner. The records would however show that the notice which was sent to R1 and R2 had been received at the given address on 28.08.2015. The statement that the signature has been forged has not been substantiated. Further, the signature that is seen in the acknowledgment card and the signature in the affidavit appears to be totally different. Therefore, the question of forging the signature does not arise. The first respondent's notice has been received by one Zeenath Fathima and the notice sent to the second respondent has been received by someone by affixing their signature. However, this Court is unable to decipher name of the person who has received the notice and affixed the signature. Therefore, the contention that the signature is forged is absolutely unwarranted and not substantiated by proof. However, taking into consideration the fact that the delay is 98 days and that the petitioner has a substantial case to urge, the delay is condoned.

5. Considering the fact that the reasons given for re-hearing is also one and the same, the petition though not yet numbered is also ordered with the consent of the counsel for the respondent. Registry is directed to number the same and list the Second Appeal for hearing.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/02/2023

Sub Assistant Registrar(CS)



TO

1. The Judge, The Principal Sub Court, Thirunelveli
2. The Judge, The Principal District Munsif Court, Thirunelveli

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

ORDER DATED : 19/01/2023

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RESTORE

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CMP(MD) . No.3162 of 2021

in

S.A.(MD) .No.404 of 2015

Giving direction and etc.

as stated within.

KB(16.02.2023) 3P 4C