



C.M.P.(MD)No.12589 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

C.M.P.(MD)No.12589 of 2022

in

S.A.(MD)No.SR16676 of 2022

and

S.A.(MD)No.SR16676 of 2022

Ahmed Batcha

... Appellant

/Vs./

1.Tamilnadu Valama Naidu Mahajana Sangam,
Through its Secretary,
R.Ramakrishnan Naidu and
at present Rajendran,
S/o.Ramakrishna Naidu,
17-A, Koodal Alagar Perumal Koil Sannathi Street,
Madurai – 1.

2.Mohamed Ratha

3.Sulthan Maideen

4.Rokkia Bhanu

... Respondents



C.M.P.(MD)No.12589 of 2022

PRAYER in C.M.P.(MD)No.12589 of 2022: Civil Miscellaneous Petition filed under Order IV Rule 9 (4) of A.S. Rules to condone the delay of 4616 days in filing the above appeal to set aside the judgment and decree of the learned Principal Subordinate Judge, Madurai, passed in A.S.No. 68 of 2007 dated 20.04.2009 confirming the judgment and decree of the learned District Munsif, Madurai passed in O.S.No.1132 of 1995 dated 26.02.2007 on the file of this Court.

PRAYER in S.A.(MD)No.SR16676 of 2022: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree in A.S.No.68 of 2007 on the file of Principal Sub Court, Madurai, dated 20.04.2009 confirming the judgment and decree in O.S.No.1132 of 1995 on the file of the District Munsif, Madurai City, dated 26.02.2007 and set aside the same by allowing this Second Appeal.

For Petitioner : Mr.D.Selvanayagam

JUDGMENT

This application has been filed seeking to condone the inordinate delay of 4616 days in filing the second appeal.

2. The petitioner is the fourth defendant in the suit. The suit in O.S.No.1132 of 1995 was filed by the first respondent / plaintiff before the District Munsif Court, Madurai, seeking for mandatory injunction to



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remove the building in the suit schedule property and for permanent injunction. The said suit was decreed in favour of the first respondent / plaintiff by the trial Court on 26.02.2007. Aggrieved by the same, the petitioner / appellant filed the First Appeal before the Sub Court, Madurai in A.S.No.68 of 2007. The lower appellate Court also confirmed the findings of the trial Court by dismissing the appeal by its Judgment and decree dated 20.04.2009. The petitioner / appellant did not choose to file the second appeal immediately thereafter. But instead, he has filed the Second Appeal only in the month of March, 2022 with an inordinate delay of 4616 days.

3. The only reason given by the petitioner / appellant for not filing the appeal on time is that he is an illiterate and indigenous person and he was not aware that he had to approach the High Court, if he was aggrieved by the concurrent findings of the Courts below. Being a person, who is the fourth defendant in the suit and the appellant in the first appeal, the reasons given by the petitioner / appellant / 4th defendant for the inordinate delay in filing the second appeal is not a bonafide and a believable reason and cannot be accepted by this Court.



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4. Illiteracy and poverty cannot be a ground for condoning the inordinate delay of 4616 days. Any person for that matter whether literate or illiterate would not have taken such a long time to file the second appeal. This Court is not satisfied with the reasons contained in the affidavit filed in support of this application seeking to condone the delay of 4616 days in filing the second appeal. The findings of the trial Court are also concurrent findings. Even on merits, on a *prima facie* consideration, the petitioner / appellant may not be able to succeed in the main second appeal.

5. For the foregoing reasons, there is no merit in this application as no sufficient cause has been shown by the petitioner / appellant for condoning the inordinate delay. In the result, this application is dismissed. Consequently, Second Appeal is rejected at the SR stage itself. No costs.

13.03.2023

Index : Yes / No
NCC : Yes / No
Sm



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TO:

- 1.The Additional District Fast Track Court, Paramakudi.
- 2.The Sub Court, Paramakudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
C.M.P.(MD)No.12589 of 2022
in
S.A.(MD)No.SR16676 of 2022

Dated:
13.03.2023