



C.M.P(MD)No.3919 of 2022

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

Thursday, the Twenty First day of September Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

C.M.P(MD)No.3919 of 2022
in
S.A(MD)SR.No.17049 of 2022

V.KALLANAI

... PETITIONER/ APPELLANT

Vs

P.VELLAIKANNU (DIED)

1.PITCHAIAMMAL

2 NALLAPONNU

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to pass an order to condone the delay of 931 days in filing the Second Appeal against the Judgment and Decree 05.04.2019 made in A.S. No. 30 of 2015 on the file of Principal District Judge, Madurai confirming the Judgement and decree passed by the Honourable 1st Additional Sub Court, Madurai in O.S. No. 309/2007 dated 07.11.2013 and thus render justice.

PRAYER IN S.A(MD)SR.No.17049 of 2022:

To set aside the Judgment and decree dated 05.04.2019 and made in A.S.No.30/2015 on the file of the Principal District Judge, Madurai confirming the Judgment and decree dated 07.11.2013 and made in O.S.No.309/2007 on the file of the 1st Additional Sub-Judge, Madurai and allow this Second Appeal.

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



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M/S.P.SHANMUGAM, Advocate for the petitioner and of MR.G.RAMAPANDIAN, on behalf of the Respondent No.1 the court made the following order:-

Reserved on : 25.08.2023

Pronounced on : 21.09.2023

This Civil Miscellaneous Petition is filed to condone the delay of 931 days in filing the Second Appeal against the judgment and decree dated 05.04.2019 made in A.S.No.30 of 2015 on the file of the Principal District Court, Madurai.

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

The petitioner has filed this Second Appeal with delay. At the time of first appeal, the petitioner was facing difficult to run his day to day life with his family. The petitioner had no earning and hence, he left from native to Kerala State for his livelihood. While he was at Kerala his cell phone was misplaced and he was unable to contact anybody. Suddenly the petitioner got message from his native that his father was died on 26.12.2020 and he returned to his native and did funeral ceremonies of his deceased father. Because of Covid-19 pandemic, he did not return to Kerala. After relaxation of pandemic, the petitioner met his counsel and came to know about the dismissal of his first appeal and gave instruction to counsel for preferring the Second Appeal. Therefore, there is a delay of 931 days in preferring the Second Appeal before this Court. It is neither willful nor wanton. If the delay is



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not condoned the petitioner will be put to irreparable loss and hardship. Hence, the petition is filed.

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

The first respondent has denied all the averments made in the affidavit filed by the petitioner. The petitioner suppressed several material facts. The petitioner approached this Court with unclean hands. The petitioner stated cock and bull stories for the sake of this petition as if he went to Kerala for livelihood and his cellphone was misplaced there. The petitioner is the plaintiff, who filed the main suit. That was dismissed by the Trial Court. Then, the petitioner filed first appeal. So, it is for the petitioner to be vigilant in prosecuting his suit. The reasons cited for condone the delay is not acceptable. The reasons is not bona- fide. Hence, the petition is liable to be dismissed.

4. The learned counsel for the petitioner has contended that the petitioner has filed the main suit for partition as he contributed half of sale consideration in purchasing the suit property. But, the petitioner was thrown away by the respondent's father. The petitioner was running his family with meagre income.



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Though the suit filed by the petitioner was dismissed, he preferred appeal before the First Appellate Court. During that period, as the petitioner had no sufficient earning and he faced difficult in maintaining day to day life, he went to Kerala and working in a estate at remote place, so the petitioner could not be able to contact anybody. Moreover, Covid-19 pandemic lockdown declared from March 2020. While being so, the petitioner received message on 26.12.2020 that his father was died and hence, the petitioner returned to his native place and did funeral ceremonies to his deceased father. Therefore, he contacted his counsel and enquired his appeal, he was told that the first appeal was dismissed. Then the petitioner wanted to prefer the Second Appeal as he has good chance of success in Second Appeal. The Hon'ble Supreme Court has issued guidelines regarding limitation in filing suits and appeals considering the Covid-19 pandemic period. Only because of reason stated in the affidavit, the delay of 931 days is caused. The reason is bona fide one and the delay may be condoned.

5. Though the first respondent has filed counter affidavit there was no representation for the first respondent, when the matter was taken up for hearing. Though name of second respondent has been printed in the cause list, she did not appear.

<https://www.mhc.tn.gov.in/judis>



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6. Heard the learned counsel for the petitioner and perused the records in this Civil Miscellaneous Petition.

7. On perusal of records it is clear that both parties are relatives with each other. The plaintiff has filed a suit in O.S.No.309 of 2007 on the file of the I Additional Sub Court, Madurai against the respondents seeking partition. The respondents contested the suit and after hot contest the Trial Court has dismissed the suit on 07.11.2013. The petitioner has preferred the appeal in A.S.No.30 of 2015 on the file of the Principal District Court, Madurai. After hearing both, the appeal was dismissed on 05.04.2019. The petitioner states that due to her family situation and other financial crisis, he could not maintain his family and hence, he went to Kerala for livelihood and he was not to contact anybody from there and only on 26.12.2020 he returned to his native place as his father died and later he came to know about the dismissal of his appeal. It is to be considered during interregnum, Covid-19 pandemic prevailed. On perusal of counter affidavit, the respondents have not objected the relationship and have not raised any strong objection except the allegation that the reason stated by the petitioner is not bona fide. The petitioner states that he contributed sale consideration for purchase of the suit property and though his suit and appeal were dismissed, he has chance of succeed in the Second



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Appeal. Every litigant has right to prefer appeal. Because of the delay caused in preferring appeal, the litigant's right of appeal should not be defeated. Moreover, the exemption of limitation period during Covid-19 pandemic issued by the Hon'ble Supreme Court has to be taken into consideration of this nature of petition. The rival contentions of both parties regarding subject matter of suit and appeal are not necessary to be discussed in this delay condone petition. Therefore, this Court is of the opinion that the petitioners have to be given an opportunity to prefer the Second Appeal and at the same time the inconvenience caused to the first 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 first respondent.

8. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay a cost of Rs.3,000/- (Rupees Three Thousand only) to the first respondent within a period of two weeks from the date of receipt of a copy of this order, failing which this Civil Miscellaneous Petition stands dismissed automatically without any further reference to this Court.



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9. 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/-
21/09/2023

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

VSD

TO

1.THE PRINCIPAL DISTRICT JUDGE, MADURAI

2.THE 1ST ADDITIONAL SUB-JUDGE, MADURAI

COPY TO

1.THE SUB ASSISTANT REGISTRAR(AE),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN

C.M.P(MD)No.3919 of 2022
in

S.A(MD)SR.No.17049 of 2022
Date :21/09/2023

RK/GB(26/09/2023) 7P / 5C

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