



CMP(MD) No.3920 of 2021

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

Thursday, the Third day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CMP(MD) No.3920 of 2021  
in  
SA(MD) SR No.75136 of 2019

BELSITHAMMA

... Petitioner / Appellant

Vs

1 BENSIKAR(DIED)

2 BENJAMIN

... Respondents / Respondents

3 MARGARAT BENSIKAR

4 BENITTO

5 TITUS

6 BATTON

7 ANEESHA

... Respondents 3 to 7

(Respondents 3 to 7 are impleaded as LR's of the deceased 1<sup>st</sup> Respondent vide Court order dated 12.08.2022 made in CMP(MD) Nos.1080 and 1082 of 2022 in SA(MD) SR No.75136 of 2019)

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 968 days in filing the above appeal in S.A(MD).SR.No.75136 of

2019

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



**CMP(MD) No.3920 of 2021**

Prayer in SA(MD) SR No.75136 of 2019:

To set aside the judgment and decree dated 17.09.2016 passed in A.S.No.67 of 2013 on the file of the Subordinate Judge, Kuzhithurai, reversing the judgment and decree dated 30.07.2013 passed in O.S.No.474 of 2006 on the file of the I Additional District Munsif, Kuzhithurai and allow the 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.J.ANANDHAVALLI, Advocate for the petitioner and of Mr.K.VAMANAN, Advocate on behalf of the Respondents, the court made the following order:-

Reserved on : 10.07.2023

Pronounced on : 03.08.2023

This Civil Miscellaneous Petition is filed to condone the delay of 968 days in filing the Second Appeal against the judgment and decree dated 17.09.2016 passed in A.S.No.67 of 2013 on the file of the Sub Court, Kuzhithurai.

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

The petitioner has filed the main suit in O.S.No.474 of 2006 before the First Additional District Munsif Court, Kuzhithurai against the defendant for permanent injunction from executing any document or any encumbrance in respect of suit property. The Trial Court correctly appreciated and decreed the suit. The defendant preferred the appeal in A.S.No.67 of 2013 before the Sub Court, Kuzhithurai and the appeal was allowed and the suit was dismissed. The judgment in appeal was



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passed on 17.09.2016 and copy application was filed on 24.09.2016 and copy of judgment was made ready on 17.12.2016. The same was not noticed to her advocate as he shifted his practice from Kuzhithurai to Trivandrum. The petitioner was waiting as her counsel stated that he would inform once he came to know about the ready of certified copy of judgment. When the respondents 2 and 3 attempted to trespass into the suit property in the month of August, 2019, the petitioner came to the status of copy application and hence, there is delay of 968 days in preferring the Second Appeal.

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

The averments that the petitioner filed the suit in O.S.No.474 of 2006 and the same was decreed and that aggrieved by the same, the respondents filed appeal in A.S.No.67 of 2013 and the appeal was allowed are admitted. The reason for the delay of 968 days in preferring the Second Appeal is absolute false. Because, the counsel for the petitioner is still appearing before the Courts in Kuzhithurai and he is regularly appearing in cases in Kuzhithurai Courts. The counsel for the petitioner has not shifted his practice from Kuzhiturai. The petitioner has not explained each and every days delay. Hence, the petitioner has no valid reason and the petition is liable to be dismissed.



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

5. It is clear that both parties are close relatives. The petitioner filed the main suit for permanent injunction against the respondent. Though the suit was decreed by the Trial Court, the First Appellate Court has dismissed the suit by allowing the appeal. The petitioner states that she was waiting for the information from the counsel about the readiness of copy of judgment. The petitioner has filed the copy application for preferring Second Appeal in time. There is no dispute in it. The petitioner states reason that since her counsel shifted his practice to Trivandrum, she could not be able to know status of copy application. Though the respondents raised objection that the petitioner's counsel is regularly appearing before the Courts in Kuzhithurai, the rights of litigant should not be affected by the acts of counsel. It is a settled principle every litigant has right to prefer the appeal. Therefore, 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 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.



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6. 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 respondents 3 to 7 on or before 17.08.2023, failing which, this petition shall stand automatically dismissed without further reference to this Court. On such deposit 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/-  
03/08/2023

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07/08/2023  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

VSD

To

1.The Subordinate Judge,  
Kuzhithurai.

2.The I Additional District Munsif,  
Kuzhithurai.

Copy to:

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



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

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-11806[I] dated 04/08/2023)

ORDER  
IN  
CMP(MD) No.3920 of 2021  
in  
SA(MD) SR No.75136 of 2019  
Date :03/08/2023

ED/MMS/SAR- (07/08/2023) 6P / 6C

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