



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

Tuesday, the Twentieth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD) Nos.5399 of 2023 in SA(MD) No.233 of 2010
and
CMP(MD) Nos.4995 of 2023 in SA(MD) No.270 of 2010

CMP(MD) Nos.5399 of 2023 in SA(MD) No.233 of 2010:

JOTHIMANI ... Petitioner / Appellant

Vs

1 JENOVA
2 RAJAMANI
3 PACKIAMANI
4 XAVIER
5 VICTOR
6 ANTHONYRAJ
7 RAJU

... Respondents / Respondents

(Notice may be dispensed on respondents 3,4,6,7 as they are ex-parte in 1st Appellate Court)

Prayer in CMP(MD). 5399/ 2023 :

To condone the delay of 371 days in filing the petition to restore the second appeal in S.A.(MD).No.233 of 2010 which was dismissed for default on 21-02-2022.

Prayer in SA(MD) No.233 of 2010:

To allow the appeal by setting aside the judgement and Decree passed in A.S.No.67 of 2008 on the file of the Additional Sub Court, Tirunelveli, dated 30.10.2009 confirming the judgement and decree in O.S.No.170 of 2004 on the file of the 2nd Additional District Munsif Court, Tirunelveli, dated 22.10.2008.

CMP(MD) Nos.4995 of 2023 in SA(MD) No.270 of 2010:

JOTHIMANI ... Petitioner / Appellant

Vs

1 JENOVA
2 XAVIER

... Respondents / Respondents



Prayer in CMP(MD). 4995/ 2023 :

To condone the delay of 371 days in filing the petition to restore the second appeal in S.A.(MD).No.270 of 2010 which was dismissed for default on 21-02-2022.

Prayer in SA(MD) No.270 of 2010:

To allow the appeal by setting aside the judgement and decree passed in A.S.No.66 of 2008 on the file of the Additional Sub Court, Tirunelveli, dated 30.10.2009 confirming the judgement and decree in O.S.No.180 of 2004 on the file of 2nd Additional District Munsif Court, Tirunelveli, dated 22.10.2008.

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 M/S.V.KANNAN, Advocate for the petitioner in both petitions, the court made the following order:-

The petitions are filed to condone the delay of 371 days in filing the petitions to restore the Second Appeals in S.A(MD)Nos.233 and 275 of 2010 which were dismissed for non-prosecution on 21.02.2022.

2. The learned counsel for the petitioner would submit that the earlier counsel reported 'no instructions' without intimating the petitioner / appellant. He would further submit that the petitioner / appellant came to know about the dismissal of appeals for non-prosecution only when he received the copy of the Judgment sent by the earlier counsel. Due to poverty, the petitioner / appellant could not mobilise the fund and hence the delay occurred.

3. The learned counsel appearing for the respondent raised no objection to allow this petition.

4. The reasons stated in the accompanying affidavit are not satisfactory. However, in order to give opportunity to the parties to resolve the dispute on merits and in view of the fact that the petitioner / appellant has also paid the cost of Rs.15,000/- as per the order of this Court dated 21.02.2022, the delay is condoned and the petitions are allowed.

sd/-
20/06/2023

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/06/2023

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

MBI

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



To

1.The Additional Sub Judge,
Tirunelveli.

2.The II Additional District Munsif,
Tirunelveli.

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.

+2 CC to M/s.V.KANNAN, Advocate (SR-9206 & 9207[I] dated 21/06/2023)

ORDER

IN

CMP(MD) Nos.5399 of 2023
in SA(MD) No.233 of 2010
and

CMP(MD) Nos.4995 of 2023
in SA(MD) No.270 of 2010
Date :20/06/2023

ED/BUC/SAR- (28/06/2023) 3P 7C