



CMP(MD) No.5940 of 2023

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

Wednesday, the Eleventh day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CMP(MD) No.5940 of 2023

IN

SA(MD)SR.No.28336 of 2023

SELVAMANI

... PETITIONER/ APPELLANT

Vs

SELLAKKANNU

... RESPONDENT/RESPONDENT

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 of 316 days in filing the above second appeal as against the judgment and decree dated 11-08-2021 in A.S.No. 34 of 2017 on the file of the Learned Additional Subordinate Judge, Pudukottai reversing the judgment and decree dated 17-03-2017 in O.S.No. 214 of 2011 on the file of the Learned District Munsif cum Judicial Magistrate, Thirumayam and thus render justice.

PRAYER IN SA(MD)SR.No.28336/2023:

Pleased to set aside the judgment and decree dated 11.8.2021 in A.S.No.34 of 2017 on the file of the Learned Additional Subordinate Judge, Pudukottai reversing the judgment and decree dated 17.3.2017 in O.S.No.214 of 2011 on the file of the Learned District Munsif cum Judicial Magistrate, Thirumayam and allow the 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 M/S.A.BANUMATHY, Advocate for the petitioner and of Mr.MAHABOOB ATHIFF,



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Advocate on behalf of the Respondent, the court made the following order:-

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This Civil Miscellaneous Petition is filed to condone the delay of 316 days in filing the above second appeal.

2.The learned counsel for the petitioner submitted that the petitioner is a senior citizen and is suffering from illness related to old age. He is a chronic patient of severe back pain, is taking treatment and was advised to take bed rest. He was unable to prefer the present appeal in time due to the aforesaid reasons.

3.The appellant has filed a suit for declaration of title and permanent injunction and got a judgment and decree in his favour. However, in the appeal filed by the respondent, the first appellate Court reversed the finding of the trial Court and dismissed the suit. The appellant has very good case and therefore, the appellant must be given an opportunity to file the second appeal against the judgment in AS.No.34 of 2017.

4.The learned counsel for the respondent opposes this petition on the ground that the delay is not properly explained.

5.Considered the rival submissions and perused the records.

6.As narrated above, the petitioner/appellant got a judgment and decree in his favour before the trial Court. However, that was reversed in the judgment of the first appellate Court. Considering the reasons stated that the petitioner is the senior



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citizen, affiliated with the diseases associated to old age, was advised to take bed rest, was not able to file the second appeal in time. Finding merits in the reason, this Court allows this petition on condition that the petitioner pays a sum of Rs.1,000/- (Rupees One Thousand only) to the respondent. Registry is directed to number the second appeal, if it is in order.

sd/-
11/10/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

MM
TO

1 THE ADDITIONAL SUBORDINATE JUDGE, PUDUKOTTAI.

2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, THIRUMAYAM.

COPY TO:

1 THE SUB ASSISTANT REGISTRAR,

A.E.SECTION,

MADURAI BENCH OF MADRAS HIGH COURT,

MADURAI.

2 THE SECTION OFFICER,

JUDICIAL SECTION,

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CMP(MD) No.5940 of 2023
Date :11/10/2023

SA/VRS/SAR. /18.10.2023/3P/5C

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