



C.M.P(MD)No.9025 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.09.2023

Pronounced on : 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.9025 of 2023

in

S.A(MD)SR.No.31317 of 2023

R.Viswanathan
represented by his Power Agent
R.Shanmugam,
3/312, New Street,
Alakkudi Village,
Thanjavur Taluk and Munsif.

... Petitioner

Vs.

1.M.Thangavadivel
2.M.Bagavandoss
3.Kannaki

... Respondents

PRAYER : Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 1611 days in filing the Second Appeal.

For Petitioner : Mr.A.Senthilkumar

For Respondents : Mr.P.Vadivel



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ORDER

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This Civil Miscellaneous Petition is filed to condone the delay of 1611 days in filing the Second Appeal.

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

The petitioner filed a suit in O.S.No.16 of 2006 on the file of the Principal Sub Court, Thanjavur for specific performance against the respondents. The suit was dismissed on 29.08.2012. Aggrieved by the decree and judgment of the Trial Court, the petitioner filed an appeal in A.S.No.67 of 2012 before the Additional District and Sessions Court (PCR), Thanjavur and the same was dismissed on 04.04.2016. Both the Courts below failed to appreciate the evidence adduced by the petitioner . The petitioner got printed copies of the judgment and decree of the Courts below on 28.09.2022. The petitioner is a senior citizen and struggles financially and also his family members affected by Covid-19. There is a delay of 1611 days in filing the Second Appeal. The petitioner has great chance of success in Second Appeal. Hence, this Civil Miscellaneous Petition is filed.



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3. The third respondent filed a counter and objected the petition and stated as follows:

This respondent filed a suit in O.S.No.108 of 2006 on the file of the Principal Sub Court, Thanjavur against the respondents 1 and 2 for specific performance and the the same was decreed. The third respondent filed E.P.No.168 of 2009 and got the sale deed registered in her favour. The petitioner filed the suit in O.S.No.16 of 2006 which was dismissed by the Trial Court and the appeal in A.S.No.67 of 2012 was also dismissed by the First Appellate Court on 04.04.2016. The petitioner filed copy application on 14.12.2021 for preferring the Second Appeal after lapse of six years. There is a delay of more than 1725 days in filing the copy application. The petitioner suppressed the delay in filing copy application. No reason was given by the petitioner. The petitioner has not approached the Court with clean hands. Therefore, the petition is liable to be dismissed.

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



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5. The learned counsel for the petitioner has submitted that the petitioner entered into sale agreement with the respondents 1 and 2 for land measuring 20.71 acres and out of which the respondents 1 and 2 executed the sale deed for 14 acres and for remaining 6.71 acres, the petitioner filed the suit in O.S.No.16 of 2006 before the Trial Court and the suit was dismissed on 29.08.2012. The petitioner preferred the first appeal in A.S.No.67 of 2012 before the Additional District and Sessions Court (PCR), Thanjavur and the same was dismissed on 04.04.2016. The petitioner filed the documents to substantiate his case, but the Courts below failed to appreciate the same. The petitioner has fair chance of success in Second Appeal. The petitioner filed the copy application for certified copies of the judgment and the decree of Courts below and the printed copies of the same was delivered on 28.09.2022. Further, the petitioner faced financial crisis and also prevailing of Covid-19 pandemic the petitioner could not file the Second Appeal in time. There caused delay of 1611 days in preferring the Second Appeal. The petitioner is aged senior citizen. Mere delay the right of appeal could not be defeated. The Hon'ble Supreme Court held that the delay may be condoned on terms. The petitioner is ready to pay cost and the delay may be condoned on terms.



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6. Per contra, the learned counsel for the respondents vehemently contended that the respondents 1 and 2 entered into a sale agreement with third respondent for 6.71 acres of land in dispute and the third respondent filed the suit in O.S.No.108 of 2006 and the same was decreed. Based on decree, the third respondent filed E.P.No.168 of 2009 and the respondents 1 and 2 executed the registered sale deed in favour of the third respondent and E.P.No.168 of 2009 was terminated. The petitioner filed the suit for specific performance upon the alleged oral agreement of sale regarding 6.71 acres. The petitioner's suit and appeal were dismissed. The appeal in A.S.No.67 of 2012 was dismissed on 04.04.2016 and after lapse of 6 years the petitioner filed the copy application on 14.12.2021 for preferring the Second Appeal. The petitioner has not properly explained the huge delay. There is no tenable and sufficient reason given to condone the delay. The petition is devoid of merits and therefore, the petition may be dismissed.

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner claim that he has entered into sale agreement for 20.71 acres and out of the same they got registered sale deed for 14 acres. For the remaining portion of 6.71 acres, the petitioner filed the



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original suit in O.S.No.16 of 2006 before the Trial Court on the basis of oral sale agreement. The Trial Court dismissed the suit on 29.08.2012.

Aggrieved by the dismissal of suit, the petitioner filed the appeal in A.S.No.67 of 2012 before the First Appellate Court and the appeal was dismissed on 04.04.2016. The petitioner has filed copy application for preferring the Second Appeal only on 14.12.2021. As rightly contended by the respondents, the petitioner has filed the copy application after lapse of six years. In the meanwhile, it is stated by the respondents that the third respondent filed a suit in O.S.No.108 of 2006 in respect of 6.71 acres of land in question and based on decree passed in that suit, E.P.No. 168 of 2009 was filed and the sale deed got registered and the said E.P.No.168 of 2009 was terminated. There is no specific denial by the petitioner regarding the same. The appeal was dismissed on 04.04.2016. The Covid-19 pandemic was prevailing in March, 2020. So, the reason stated by the petitioner is untenable.

8. It is a settled principle that the delay is immaterial if sufficient cause is shown and there are several changed principle of law settled by the Hon'ble Supreme Court and by this Court in respect of delay condone matters. The delay of 1611 days in this case is not an ordinary delay and



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it is abnormal delay. Further, there is no reason stated for filing the copy application on 14.12.2021 for getting certified copies of judgment and decree passed in A.S.No.67 of 2012, which was passed on 04.04.2016. The respondents state that in respect of 6.71 acres, the suit was filed and decreed and through execution proceedings registered sale deed executed in favour of the third respondent through Court of law and the execution proceedings terminated.

9. The negligence on the part of the petitioner should not affect the right of the other party/respondents herein. Delay cannot be condoned by the Courts in a mechanical or routine manner, so as to cause prejudice to the interest of the other parties. Condonation of delay is an exception and the Courts have to exercise the power of discretion only if the reasons are adequate and acceptable. Unexplained delay cannot be condoned. Such unexplained delay is to be construed as an uncondonable delay. The Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial.



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10. The present case on hand, there is “negligence and lapses” on the part of the petitioner. The litigants are always expected to be vigilant over their rights and liabilities, duties and responsibilities and any litigant, who slept over his right, has to necessary loose his right on account of efflux of time which caused expiry of the cause and that condoning long delay in a routine or mechanical manner by the Courts could not considered as a good practice. This Court has further held that litigations/appeals are expected to be filed within the period of limitation as contemplated under the Statutes and that condonations of delay is an exception, which are to be exercised discreetly, and the Courts are vested with the power of discretion to condone the delay that does not mean that enormous delay in instituting the suit or appeal is to be condoned mechanically. In this case, the petitioner has filed this petition to condone the delay of 1611 days stating that the Covid -19 pandemic and the petitioner’s family members affected by Covid-19. Admittedly the appeal was dismissed in the year 2016 and Covid-19 pandemic declared in the year 2020. The petitioner has not produced any materials to substantiate their reason. In the above facts and circumstances, the petitioner has no merits in this petition and this petition is devoid of merits and the same is liable to be dismissed.



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11. In the result, this Civil Miscellaneous Petition stands dismissed. Consequently, the Second Appeal is rejected at SR stage itself. No costs.

21.11.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The I Additional District and Sessions Judge (PCR),
Thanjavur.

2.The Principal Sub Court,
Thanjavur.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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