



CMP(MD) No.7590 of 2023

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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

CMP(MD) No.7590 of 2023

in

SA(MD) SR.No.11909 of 2019

P.PALANISAMY

... PETITIONER/APPELLANT

Vs

1 S.JAWAHAR

2 S.CHINNAMMAL (1ST WIFE)

3 AMARAVATHI (2ND WIFE)

... RESPONDENTS/RESPONDENTS

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 1486 days in representing the papers in S.A.(MD) SR.No.11909 of 2019 before this Honourable Court.

Prayer in SA(MD)SR.No.11909/2019 :

To call for the records and set aside the judgement and decree dated 24.07.2018 in A.S.No.33/2016 on the file of the Principal Sub Court, Dindigul, confirming the judgment and decree dated 06.07.2016 in O.S.No.684 of 2008 on the file of the Principal District Munsif Court, Dindigul and allow the Second Appeal with costs throughout.

COMMON 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 H.LAKSHMI SHANKAR, Advocate for the petitioner and of MR.R.RAMADURAI, Advocate on behalf of the Respondent Nos.1 to 3, the court made the following order:-

This Civil Miscellaneous Petition is filed by the petitioner to condone the delay of 1486 days in re-presenting the papers in S.A(MD)SR.No.11909 of 2019.

2. The petitioner has stated reasons in the accompanying affidavit filed along

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with the Civil miscellaneous petition are follows:

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The petitioner has filed the Second Appeal against the judgment and decree dated 24.07.2018 passed in A.S.No.33 of 2016 on the file of the Principal Sub Court, Dindigul, confirming the judgment and decree dated 06.07.2016 made in O.S.No.684 of 2008 on the file of the Principal District Munsif Court, Dindigul. The appeal papers in Second Appeal have been presented before this Court on 15.03.2019 and the same have been returned on 20.03.2019 for certain compliance. The returned papers were misplaced at the advocate office of the petitioner and they could not be traced. The petitioner has been repeatedly contacting his advocate and asked to search. During 2nd week of March, 2023 the petitioner received a phone call from his advocate office stating that the Second Appeal papers mixed with some other disposed bundles were sent to Madurai Office long back and when a client in another case came to receive the disposed papers, the petitioner's papers in Second Appeal found from the disposed bundles. Therefore, there is delay of 1486 days in re-presenting the papers in Second Appeal. The petitioner has good chance of success in Second Appeal. The said delay is neither willful nor wanton. If the delay is not condoned the petitioner will be put to irreparable loss and hardship. Hence, the delay may be condoned.

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

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The petitioner has to prove the averments made in the affidavit. The reasons stated by the petitioner are not sufficient at all. The petitioner has to explain each and every days delay. The Court will not condone the delay if it is not convinced that the delay occurred due to beyond control. No prudent man would believe that the papers were misplaced in advocate office and the same could not be traced for four years. The petitioner is a habitual litigant and there are many cases pending between the petitioner and the respondents. The petitioner and the respondents are relatives and the petitioner has filed this petition to prolong the litigation. The matter is of concurrent findings of the trial Court and the First Appellate Court, since the petitioner has no case. The petition is not maintainable and therefore, the petition is liable to be dismissed.

4. The learned counsel for the petitioner has submitted that the Trial Court as well as the First Appellate Court have not appreciated the evidence adduced by both parties since the suit is filed for declaration that the suit property is common pathway and to remove the encroachments. The petitioner took effective steps to prefer appeal and accordingly, the petitioner's counsel has preferred the Second Appeal, but, the papers of the Second Appeal were returned by this Court for certain queries. Unfortunately, the returned papers were misplaced with disposed case bundles of the advocate office and the delay has happened beyond control. Further, the matter is



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between the party and the Court as there is a delay in re-presentation of returned appeal papers. The respondents will not be prejudiced by allowing this petition and the petitioner prays that the petition may be allowed.

5. Per contra, the learned counsel for the respondent has vehemently contended that the petitioner has not explained the delay by substantiating sufficient materials. The petitioner has filed this petition to drag on the proceedings, since the petitioner has no valid case. The counsel for the respondents has further contended that the petitioner is a habitual litigant and he has filed many cases against the respondents so the petitioner is well aware of the Court proceedings. Therefore, the reason stated by the petitioner is not acceptable and hence, the petition may be dismissed.

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

7. On hearing both, it is clear that both the petitioner and the respondents are relatives as admitted by the respondents in their counter. Further, on perusal of records, the suit is filed for declaration that suit property is common pathway and for removal of encroachments. Admittedly, there are concurrent findings of the both Courts below, that only would not disentitle a litigant to put forth case in the Second Appeal. There is no dispute that the petitioner has filed the Second Appeal within the time and the same was returned by this court raising certain queries. The returned papers have not been re-presented within the stipulated time. There is a delay of



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1486 delay in re-presentation of second appeal papers. So, the matter is between the party and the Court. The petitioner has stated the reason for the delay that after returning the papers, the returned papers were misplaced in the advocate office and the same were mingled with disposed case bundles and sent to Madurai office. The petitioner has also stated in his affidavit that he has been repeatedly contacting the advocate and requested for search of his case records. It is settled principle that the mistake or error committed by the advocate office would not affect the right of the litigants. The petitioner states that he has fair chance of success in the Second Appeal. Considering the relationship of the parties and also nature of suit proceedings, this Court is of the opinion that the respondents will not be prejudiced in allowing this petition. At the same time, the respondents should be suitably compensated for the hardship caused by the petitioner. Therefore, considering the facts and circumstances of the case and in the interest of justice, this Court holds that the petition is to be allowed condoning the delay of 1486 days in representing the second appeal by imposing certain condition to meet out the inconvenience caused to the respondents.

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 respondents 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



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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 SUBORDINATE JUDGE, DINDIGUL.

2 THE PRINCIPAL DISTRICT MUNSIF, DINDIGUL.

COPY TO

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

ORDER IN

CMP(MD) No.7590 of 2023
in SA(MD) SR.No.11909 of 2019

Date :21/09/2023

RS/JGB/SAR-(26.09.2023) 6P 4C

Madurai Bench of Madras High Court is issuing
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