



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

Friday, the Sixteenth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD) No.10167 of 2022

IN

SA(MD) No.153 of 2014

1 MAYALAGAN (DIED) ... 1st Appellant
2 KANNAN ... Petitioner /
13th Proposed Appellant
(Legal heir of deceased Mayalagan)

Vs

1 PERIYAKARUPPAN
RAJA ALIAS MADARASAN (DIED)
2 GOVINDAN
3 ANGUTHAN
NALLI (DIED)
4 PARANTHAMAN
5 NARAYANAN
6 PICHAIAMMAL
7 PARAMESWARI
8 MINOR. KARUNAGARAN
9 MINOR. NALLAMANI
10 MINOR. ABINAYA
11 MINOR. NAGARAJAN ... Respondents 1 to 11 /
Appellants 2 to 12
(RESPONDENTS 8 TO 11 REPRESENTED BY HER MOTHER PARAMESWARI)

12 K. PALANICHAMY KONAR DIED



13 PUNITHA
14 THAVAMANI
15 VALLI

16 KANDAVEL

17 KEDARNATH

18 SHANMUGAM

19 THIRUGNANASAMBANTHAM

... Respondents 13 to 19 /
Proposed Respondents 2 to 8

20 RAKKU

21 MOOKUSAMY

22 PARVATHY

23 GOPAL

24 PANCHAVARNAM

25 KALAISELVAM

... Respondents 20 to 25 /
Proposed Respondents 9 to 14

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 1795 days in filing the Restoration Petition in the above Second Appeal in S.A. (MD). No. 153 of 2014 on the file of this Honourable Court.

Prayer in SA(MD) No.153 of 2014:

To prefer this memorandum of second appeal against the decree and judgment of the First Additional Subordinate Judge of Madurai dated 17.12.2012 and passed in A.S.No.17 of 2007 by setting aside the decree and judgment of the Principal District Munsif of Madurai Town dated 20.11.2006 and passed in O.S.No.1157 of 2000.

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 not appeared for petitioner in person or through by an Advocate and of Mr.KANNAN, Advocate on behalf of the Respondents No.19 to 19, the court made the following order:-

This petition has been filed to condone the delay of 1795 days in filing the restoration petition.



father expired and the second petitioner is illiterate and therefore, he did not know about the litigations. One Palanichamy Konar expired and an application was filed to bring his legal heirs on record and the same was returned for certain defects. The said defects were not complied with. Therefore, the petition was dismissed for default. Thereafter, an application was filed in C.M.P (MD).No.9036 of 2018 to condone the delay of 1088 days in filing the petition to restore the second appeal. The said application was dismissed on 11.12.2018. Even pending the second appeal, the petitioner's father died on 05.11.2018 leaving behind the petitioner and the respondents 20 to 25 as his legal heirs, but unfortunately, no steps have been taken to bring on record themselves as the legal heirs of the deceased father. Therefore, non filing of the petition is neither wilful nor wanton. Now, the present petition has been filed to condone the delay of 1795 days in filing the restoration petition.

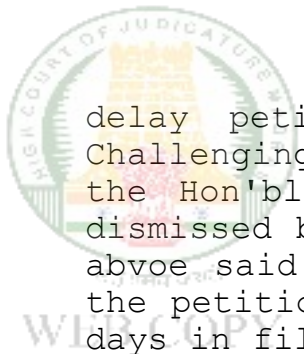
3. When the matter was listed on two hearings, the learned counsel for the petitioner was not present and the respondents have filed a counter affidavit stating that the petitioner has filed C.M.P(MD).No.9036 of 2018, to condone the delay of 1088 days in filing the petition to restore the second appeal, which was dismissed on 11.12.2018. Thereafter, the petitioner and his brothers preferred S.L.P before the Hon'ble Supreme Court and the same was also dismissed. Now, suppressing the said fact, the petitioner filed this petition to condone the delay of 1795 days in filing the restoration petition. The petitioner has not come to this Court with clean hands and the petitioner suppressed the fact that he approached the Hon'ble Supreme Court and filed S.L.P and the same was dismissed. Therefore, this present petition is not maintainable.

4. Heard the learned counsel for the respondents and perused the materials available on record.

5. Admittedly, the father of the petitioner filed S.A.(MD). No.153 of 2014 and subsequently, he died and also proposed parties were impleaded. Meanwhile, one of the respondents also died and no steps have been taken, in spite of several opportunities given to the petitioner. Therefore, this Court dismissed the second appeal for default. Thereafter, the petitioner filed an application in C.M.P(MD).No.9036 of 2018 to condone the delay of 1088 days in filing the petition for restoration of the second appeal and the same was also dismissed on 11.12.2018. As against the dismissal order, the petitioner filed S.L.P before the Hon'ble Supreme Court and after issuing notice to the parties, SLP was dismissed.

6. A perusal of the affidavit filed by the petitioner shows that he has suppressed the fact that he filed SLP before the Hon'ble Supreme Court and the same was dismissed.

<https://www.mhc.tn.gov.in/> On the earlier occasion, the petitioner has filed a condone



delay petition before this Court and the same was dismissed. Challenging the dismissal order, the petitioner has approached the Hon'ble Supreme Court and filed S.L.P and the same was also dismissed by confirming the order of this Court. By suppressing the above said fact that he approached the Hon'ble Supreme Court, now the petitioner has filed this petition to condone the delay of 1795 days in filing the restoration petition as if he is not aware of the proceedings of the Hon'ble Supreme Court. The reasons stated in the accompanying affidavit are not satisfied and moreover, he has suppressed the fact that he approached the Hon'ble Supreme Court and filed SLP and the same was dismissed.

8. Once the Hon'ble Supreme Court dismissed the Special Leave Petition, he has no locus standi to file the present petition and therefore, this petition is dismissed as not maintainable.

sd/-

16/06/2023

/ TRUE COPY /

/07/2023

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

TTA

To

1.The I Additional Subordinate Judge,
Madurai.

2.The Principal District Munsif,
Madurai Town.

+1. C.C. to M/S.J.MILTON PON DAVIDSON Advocate SR.No.29105(F),
dated 20.06.2023.

ORDER

IN

CMP(MD) No.10167 of 2022

IN

SA(MD) No.153 of 2014

Date :16/06/2023

ED/ /SAR- (10/07/2023) 4P 4C