



C.M.P.(MD).No.8037 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.P.(MD).No.8037 of 2022

in

S.A.(MD).SR.No.18056 of 2014

1.V.A.Ganesan (Died)

... Sole Appellant

2.Jeyalakshimi

3.Mohanraj

4.Rajeswari

5.Maheswari

...2 to 5 Petitioners/Proposed Appellants

Vs.

The Commissioner,
Office at Dindigul Municipality,
Dindigul Municipality,
Dindigul District.

...Respondent/Respondent

Prayer in C.M.P.(MD).No.8037 of 2022: Civil Miscellaneous Petition is filed under Section 5 of Limitation Act to condone 1455 days delay to file restore petition in the above SA.(MD).SR.No.18056 of 2014.

Prayer in S.A.(MD).SR.No.18056 of 2014: Second Appeal is filed under Section 100 of CPC to call for the records and set aside the decree and judgment of the first appellate court in A.S.No.88 of 2012 on the file of Additional Sub Judge, Dindigul (wrongly mentioned as Principal Sub Judge,



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Dindigul) dated 24.01.2014 which it was confirmed decree and judgment passed in O.S.No.173 of 2009 on the file of Additional District Munsif, Dindigul dated 25.07.2012.

For Petitioners : Mr.J.Gunaseelanmuthaih
For Respondent : Mr.M.Thirunavukkarasu
Standing Counsel

ORDER

This Civil Miscellaneous Petition has been filed seeking to condone the delay of 1455 days in filing the restoration petition seeking to restore the Second Appeal, which was dismissed for default on 09.08.2016.

2. The petitioners are the legal representatives of the deceased appellant and aggrieved by the concurrent findings of the Courts below, the appellant has filed this Second Appeal, which is in the SR stage. The reason for seeking condonation of delay is found in paragraph 2 of the affidavit which is extracted hereunder:

"2. It is submitted that my father has filed by petitioner/appellant second appeal against decree and judgment in AS.No.88/2008 on the file of Principal Sub Judge, Dindigul dated 24.01.2014 in SASR.No.18056/2014 dated 17.04.2014 same was returned, then represented on 02.12.2014. Subsequently the bundle was dismissed for default



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on 09.08.2016 by this Hon'ble Court. Due to non-compliance of return remarks. Actually I file this application immediately 30 days from the date of dismissal order. My father namely Ganesan had followed this case till his demise. He was died on 24.04.2018 we are not aware case of the Second Appeal. Before 1 month back my family members are trying to shift my residing place and shift the house hold articles. I found above said case bundle details at the time of shifting the things. Immediately I go through the bundle and contact with my counsel and came to knowledge my case was dismiss for default on 09.08.2016 due to non-prosecution. Immediately I file this petition. In between 1455 days delay was occurred to file this restore petition with 1455 days delay. Please condone the delay to file this restore petition. Otherwise we will be put irreparable loss and hardship."

3. The delay sought to be condoned is an inordinate delay. Only due to the fact that the appellant did not satisfy the requirements of Registry for a long period of time, earlier the petition filed by the appellant seeking to condone the delay in re-presentation was dismissed for non-prosecution. The present petition has been filed also to condone an inordinate delay of 1455 days in filing the restoration petition to restore the Second Appeal, which was dismissed for default on 09.08.2016. For condoning an inordinate delay, no sufficient reasons have been given by the petitioner as seen from the affidavit



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filed in support of this application and the reasons are extracted supra.

Therefore, there is no merit in this application. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, S.A.(MD).SR.No.18056 of 2014 is rejected.

20.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Additional Sub-Ordinate Court,
Dindigul.
- 2.The Additional District Munsif Court,
Dindigul.
- 3.The Commissioner,
Office at Dindigul Municipality,
Dindigul Municipality,
Dindigul District.
- 4.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

Lm

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