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

Wednesday, the Sixteenth day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CMP(MD) No.11054 of 2022

in

SA(MD)SR.No.38625 of 2022

1 A. NITHYA NIRMALA

2 MINOR. L. GLADWIN CIBI,
REPRESENTED BY HIS MOTHER AND NATURAL
GUARDIAN 1ST APPELLANT A. NITHYA NIRMALA,
... PETITIONERS/ APPELLANTS

Vs

1 A.REGINA MARY

2 VIJAYASEKARI ... 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 of 1115 days caused in filing the above S.A. (MD). SR. No. 38625 of 2022.

PRAYER in SA(MD)SR.No.38625 of 2022:

To reverse and set aside the judgment and Decree dated 19.03.2019 passed by the 1st Additional District Judge(PCR)Tiruchirappalli in A.S.No.13/2016 confirming the Judgment and Decree of Subordinate Judge, Tiruchirappalli dated 09.11.2012 in O.S.No.120/2007.

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.S.PRAKASH, Advocate for the petitioner and of Mr.K.M.MUTHU, Advocate on behalf of the Respondent, the Court made the following order:-

Reserved on : 31.07.2023

Pronounced on : 16.08.2023

This Civil Miscellaneous Petition is filed to condone the delay of 1115 days in filing the Second Appeal in S.A(MD)SR.No.38625 of 2022 against the judgment and decree dated 19.03.2019 passed in A.S.No.13 of 2016 on the file of the I Additional District Court, (PCR), Tiruchirapalli.

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

The first petitioner has filed an affidavit for herself and for second minor petitioner. The first petitioner's deceased husband Lawrence was son of P.S.Arulsamy. The respondents are daughters of P.S.Arulsamy. The said Arulsamy executed a Will dated 21.10.2005 in favour of the first petitioner's husband Lawrence. The respondents filed a suit in O.S.No.120 of 2007 to declare the said Will is null and void and the suit was decreed. Against the decree and judgment in O.S.No.120 of 2007 the petitioners have preferred the appeal in A.S.No.13 of 2016 before the I Additional District Court, (PCR), Tiruchirappalli and the appeal was dismissed on 19.03.2019 confirming the judgment and decree passed in O.S.No.120 of 2007. The first petitioner filed copy application in C.A.No.3952 on 26.03.2019 for preferring the



appeal. The certified copy of judgment and decree were delivered to the earlier counsel on 06.07.2019, who had not handed over the same to the petitioners. The petitioner was under expectation that as and when their counsel receives the copy of judgment and decree and hand over it to the petitioners to proceed further. Only on receipt of notice in E.P.No.64 of 2019, the petitioners enquired about the filing of Second Appeal. Unfortunately the earlier counsel refused to defend and in the meantime Covid-19 pandemic prevailed over and hence, there is a delay of 1115 days in preferring the Second Appeal.

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

The original suit was decreed on 09.11.2012 in favour of the respondents. The petitioners preferred the first appeal in A.S.No.13 of 2016 before the I Additional District Court, Tiruchirappalli after lapse of four years. The petitioners blamed on their counsel who appeared before the Lower Court. The petitioners slept over her right like a Rip Van Winkle till the Executing Court sent the notice to the petitioners and the petitioners woke up. The delay of 1115 is an inordinate delay. The prejudice caused to the respondent has to be considered. The sympathy cannot be stretched so far as to condone the delay of 1115 days. Hence, the petition has no valid reason and the same is liable to be dismissed.



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

5. It is clear that both parties are relatives. The respondents filed the original suit in O.S.No.120 of 2007 for declaration that the Will dated 21.10.2005 executed by P.S.Arulsamy in favour of Lawrence and its subsequent sale deed as null and void. Lawrence is the husband of the first petitioner and is now no more. The respondents are sisters of the said Lawrence. The original suit was decreed. The appeal filed against the judgment and decree of the Trial Court was dismissed on 19.03.2019. The petitioners state that they filed copy application on 26.03.2019 and the certified copies were delivered on 06.07.2019 to their earlier counsel, who failed to hand over the same to the petitioners. The petitioners further state that when they received notice in execution proceedings they enquired about Second Appeal, but their earlier counsel refused to defend and in the meantime Covid-19 pandemic prevailed. On perusal of counter affidavit, the respondents have not objected the relationship and have not raised any strong objection except the allegation that sympathy cannot be stretched to condone huge delay and the prejudice caused to the respondent is to be considered. It is a settled principle that every litigant has right to prefer the appeal. Mere long delay, the right of appeal to a party should not be affected. The rival contentions of both parties regarding the subject matter of suit and the appeal are not necessary to



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be discussed in this delay condone petition. Therefore, this Court is of the opinion that the petitioners have to be given an opportunity to prefer the Second Appeal and at the same time the inconvenience caused to the respondents has to be compensated. Considering the above facts and circumstances, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the respondents.

6. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioners shall pay a cost of Rs.3,000/- (Rupees Three Thousand only) to the respondents on or before 30.08.2023, failing which this Civil Miscellaneous Petition stands dismissed automatically without any further reference to this Court.

7. 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/-
16/08/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

vsd

TO

1 THE I ADDITIONAL DISTRICT JUDGE(PCR),
TIRUCHIRAPPALLI.



W B C THE SUBORDINATE JUDGE,
TIRUCHIRAPPALLI.

Copy to:

- 1 THE SUB ASSISTANT REGISTRAR, AE 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.11054 of 2022
in
SA(MD)SR.No.38625 of 2022
Date :16/08/2023

SS/BUC/17/08/2023/6P/5C

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