



C.M.P.(MD).No.4661 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.P.(MD).No.4661 of 2018

in

S.A.(MD).No.SR9803 of 2018

1.Kanagaraj

2.Stalin

3.Nesian

... Petitioners/Appellants

Vs.

1.Russel Raj

2.Mercy

3.Vijila

4.Neelakanta Sarma

5.Ramachandra Sarma

6.Parameswara Sarma

7.Vilathurai Village Panchayat
Represented by its President,
Vilathurai Panchayat Office,
Kunnathoor Village,
Kappukad P.O,
Vilavancode Taluk,
Kanyakumari District.

8.Christober Jeya Raj

...Respondents/Respondents



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Prayer in C.M.P.(MD).No.4661 of 2018: Civil Miscellaneous Petition is filed under Order 41 Rule 3(A) of CPC to condone the delay of 443 days in filing the above Second Appeal.

Prayer in S.A.(MD).No.SR9803 of 2018: Second Appeal is filed under Section 100 of CPC to allow te Second Appeal and set aside the judgment and decree passed in A.S.No.83 of 2012 dated 08.01.2016 on the file of the Subordinate Judge (Camp Court), Kuzhithurai, reversing the judgment and decree passed in O.S.No.209 of 2003 dated 27.08.2012 on the file of the Principal District Munsif, Kuzhithurai.

For Petitioners : Mr.S.Titus
For R-1 : Mr.I.Robert Chandrakumar
For R-2 to R-6 & R-8 : No Appearance
For R-7 : Mr.T.Villavankothai,
Additional Government Pleader.

ORDER

The Civil Miscellaneous Petition is filed seeking to condone the delay of 443 days in filing the Second Appeal.

2. The petitioners are the plaintiffs in the suit in O.S.No.209 of 2003 on the file of the Principal District Munsif, Kuzhithurai. The said suit was filed to declare the judgment and decree dated 29.06.1994 passed in O.S.No.332 of 1983 as null and void. The petitioners have also sought for possession of the



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suit schedule property. The suit in O.S.No.209 of 2003 filed by the petitioners came to be decreed in their favour by the judgment and decree of the District Munsif Court, Kuzhithurai on 27.08.2012. Aggrieved by the same, the defendants in the said suit, who are the respondents in the present Second Appeal filed by the petitioners, filed A.S.No.83 of 2012 before the Sub Court, Kuzhithurai. By judgment and decree dated 08.01.2016 in A.S.No.83 of 2012, the Sub Court, Kuzhithurai reversed the findings of the Trial Court by allowing the appeal filed by the respondents herein. Accordingly, the suit in O.S.No.209 of 2003 filed by the petitioners herein came to be dismissed. Aggrieved by the judgment and decree of the Sub Court, Kuzhithurai dated 08.01.2016 in A.S.No.83 of 2012, the petitioners have preferred the Second Appeal and they have filed this Civil Miscellaneous Petition seeking to condone the delay of 443 days in filing the Second Appeal.

3. In the affidavit filed in support of this Civil Miscellaneous Petition, the only reason given by the petitioners seeking for condonation of inordinate delay of 443 days in filing the Second Appeal is that the lower court advocate did not inform the petitioners about the receiving of the judgment and decree from the First Appellate Court. According to them, only on 05.03.2018, they were able to get back the case bundles pertaining to the judgment and decree



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dated 08.01.2016 passed in A.S.No.83 of 2012 from the lower court advocate.

They have also admitted in the affidavit filed in support of this Civil Miscellaneous Petition that the copy application seeking to get a certified copy of the judgment and decree dated 08.01.2016 in A.S.No.83 of 2012 was filed on 11.01.2016 and the said certified copy was also made ready on 22.09.2016 and it was delivered on 24.09.2016. However, as seen from the affidavit filed in support of this Civil Miscellaneous Petition, excepting for making a bald averment that only on 05.03.2018, the petitioners were able to collect the case bundle from the lower court advocate, they have not stated as to what steps the petitioners took to ascertain the details from the lower court advocate between 08.01.2016, when the judgment and decree was passed in A.S.No.83 of 2012 and 05.03.2018 and till the date when they claim to be aware of the judgment and decree dated 08.01.2016 passed in A.S.No.83 of 2012.

4. Any prudent litigant would have followed up the status of the case. But, in the instant case on hand, it is noticed that the petitioners have been indifferent in following up the status with regard to the judgment and decree dated 08.01.2016 passed by the Lower Appellate Court in A.S.No.83 of 2012. Mere bald averments are not sufficient while seeking for condonation of an inordinate delay, which, in the instant case is 443 days.



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5. The respondents have also contended that the petitioners are residing very close to their advocate's office, though the same is disputed by the learned counsel for the petitioners.

6. Admittedly, the petitioners have challenged the judgment and decree dated 29.06.1994 passed in O.S.No.332 of 1983 in the suit in O.S.No.209 of 2003. The suit in O.S.No.209 of 2003 was filed by the petitioners after a lapse of more than nine years from the date of the judgment and decree passed in O.S.No.332 of 1983. Any litigation will have to attain finality at the earliest possible time and it cannot be prolonged forever. If the petitioners were really interested in fighting this litigation in its true spirit for which it was instituted, they would have been diligent enough to file the Second Appeal on time. But have filed the same with an inordinate delay of 443 days, that too, when their suit has challenged a judgment and decree passed in another suit in O.S.No.332 of 1983, which was passed on 29.06.1994. Sufficient reasons will have to be given for condoning such an inordinate delay of 443 days.

7. For the foregoing reasons, this Court is of the considered view that excepting for making bald averments in the affidavit filed in support of this Civil Miscellaneous Petition, no proper reason has been given by the petitioners



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for condoning this inordinate delay. In the result, there is no merit in this Civil Miscellaneous Petition. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, S.A.(MD).No.SR9803 of 2018 is rejected.

06.03.2023

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

To

- 1.The Subordinate Court (Camp Court),
Kuzhithurai.
- 2.The Principal District Munsif Court,
Kuzhithurai.
- 3.The President,
Vilathurai Village Panchayat
Vilathurai Panchayat Office,
Kunnathoor Village,
Kappukad P.O,
Vilavancode Taluk,
Kanyakumari 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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in
S.A.(MD).No.SR9803 of 2018**

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