



CMP(MD) No.10956 of 2023

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

Wednesday, the Eleventh day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CMP(MD) No.10956 of 2023

in

SA(MD)SR.No.35422 of 2023

1 S. ASHOK

2 S. RAJA

... PETITIONERS/ APPELLANTS

Vs

1 NIRUBHA SUNDARRAJAN

2 SEENIVASAN CHETTIAR

3 S. SUMATHY

4 S. SEENIVASA BABU

... 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 258 days in filing the above Second Appeal.

PRAYER in SA(MD)SR.No.35422 of 2023:

Pleased to the judgment and decree dated 25.04.2022 passed in A.S.No.6 of 2020 on the file of Sessions Judge, Fast Track Mahila Court, Sivagangai reversing the judgment and decree dated 18.12.2019 passed in O.S.No.49 of 2019 on the file of Learned Sub-Court, Manamadurai.



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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.V.MALAIYENDRAN, Advocate for the petitioner and of Mr.G.ARAVINDHAN, Advocate on behalf of the 1st Respondent and Mr.V.SELVAKUMAR, Advocate for the respondents 2 to 4, the Court made the following order:-

This Civil Miscellaneous Petition is filed to condone the delay of 258 days in filing the above second appeal.

2.It is the submission of the learned counsel for the petitioners that the petitioners filed a suit in O.S.No.49 of 2019 seeking the relief of partition and for other reliefs. The trial Court decreed the suit. However in the appeal filed in A.S.No.6 of 2020, the first appellate Court reversed the judgment and dismissed the suit. Against the said judgment, the petitioners filed this second appeal.

3.He further submitted that the first appellate Court delivered the judgment on 25.04.2022. The trial Court advocate sent an intimation and requested to contact him, but that communication did not reach the learned counsel for the petitioner. Only during the last week of August 2022, he contacted his counsel and came to know about the status of the appeal. Due to his illness, he was not able to contact the trial Court advocate and only in September, 2022, he contacted him. Thereafter, the



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certified copy of the judgment and decree was applied and it was received on 04.11.2022. All these factors contributed to the delay of 258 days in filing the second appeal. The petitioners got decree in their favour in the trial Court. They have a good chance of success in the second appeal and prayed for condoning the delay of 258 days in filing the second appeal.

4.In response, the learned counsel appearing for the respondents opposes this petition on the ground that the reason stated for the delay in filing the second appeal cannot be accepted.

5.Considered the rival submissions and perused the records.

6.It is seen from the facts narrated that the appellants got the decree in their favour before the trial Court and that was reversed in the first appellate Court. It appears that the appellants have some merits in this case. Therefore, this Court is of the view that the petitioners must be given an opportunity to challenge the judgment in A.S.No.6 of 2020. In this view of the matter, this Court is inclined to allow this petition subject to payment of costs of Rs.1,000/- each to the respondents.



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7. Accordingly, this Civil Miscellaneous Petition is allowed. Registry is directed to number the second appeal, if it is in order. The payment of costs to the respondents is subject to re-presentation of the Vakalat.

sd/-
10/10/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

MM

TO

- 1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, SIVAGANGAI.
- 2 THE SUBORDINATE JUDGE,
MANAMADURAI.

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.



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ORDER
IN
CMP(MD) No.10956 of 2023
in
SA(MD)SR.No.35422 of 2023
Date :11/10/2023

SS/DD/SAR- /20/10/2023/5P/5C

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