



C.M.P.(MD).No.11041 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.P.(MD).No.11041 of 2022

in

A.S.(MD).SR.No.69405 of 2022

C.M.P.(MD).No.11041 of 2022

- 1.Maha Jabeen
- 2.K.Mahe Zhameem
- 3.K.Nazeem
- 4.K.Mumtaj Begam
- 5.K.Mahaboob Begam
- 6.P.Shanawaz Begam
- 7.K.Sharmila Kulsum
- 8.K.Kulam Dhasthakeer Khader

... Petitioners

Vs.

- 1.M.Syed Sulthan Ibrahim
- 2.A.Syed Ibrahim
- 3.A.Jamal Mohamed
- 4.A.Sheik Dawood
- 5.S.Abdul Raheem
- 6.M.Mayandi Thever
- 7.A.Shajahan
- 8.K.Noorjahan
- 9.Ismath
- 10.I.Sadham Hussain
- 11.S.Ignatius
- 12.Janibai @ Khathiri
- 13.Khader Maideen
- 14.Mohammed Raffeeek
- 15.Dindigul Town Co-operative Bank
through its Secretary,
New Pensioner Street.

... Respondents



C.M.P.(MD).No.11041 of 2022

PRAYER: This application has been filed under Order 41 Rule 3A of C.P.C., to condone the delay of 3773 days in filing the first appeal and take this first appeal on file.

For Petitioners : Mr.F.X.Eugene
For R2 and R3 : Mr.H.Lakshmi Shankar
For R4 : Mr.S.Ramesh
For R5 : Mr.M.P.Senthil

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15.Dindigul Town Co-operative Bank
through its Secretary,
New Pensioner Street.

... Respondents

PRAYER: This appeal has been filed under Order 41 Rule 3A of C.P.C., against the judgment and decree dated 11.04.2012 in O.S.No.52 of 2010 on the file of the District Court, Fast Track Court, Dindigul.

For Petitioners	: Mr.F.X.Eugene
For R2 and R3	: Mr.H.Lakshmi Shankar
For R4	: Mr.S.Ramesh
For R5	: Mr.M.P.Senthil

COMMON JUDGMENT

This application has been filed to condone the delay of 3773 days in filing the first appeal.

2. The suit in O.S.No.52 of 2010 has been originally filed for declaration and recovery of possession, which has been dismissed by the trial Court.

3. It is the contention of the petitioners that the suit was dismissed on 11.04.2012. After obtaining the certified copies, the first petitioner has entrusted all the papers to the Senior Advocate M.S.Balasubramania Iyer, who was practicing in the High Court of Madurai Bench, on 05.07.2012 and the



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Advocate directed the first petitioner to bring necessary Court fees and other expenses within a month on 01.08.2012. He has also made arrangements for necessary money and handed over the bundle to the Advocate as early as on 01.08.2012. The Advocate also directed the first petitioner to meet him within 15 days. Thereafter, the first petitioner contacted the Advocate on 14.08.2012 itself. On 14.08.2012, the Advocate prepared the first appeal and obtained signature from the first petitioner in the memorandum of appeal. Thereafter, on 22.08.2012, when the first petitioner contacted the Advocate, he told him that since he has missed some papers and mixed those papers along with some other bundles, he has not filed the appeal. Thereafter, he contacted the Advocate over phone frequently. But, he did not file the appeal and he has not traced the missed papers. Once again, he met the Advocate on 02.01.2013 and on that day also he told the first petitioner that he would communicate him immediately when he traces those missed papers. But he did not inform the first petitioner anything. Thereafter only the first petitioner came to know that the Advocate passed away on 31.03.2022. Therefore, he went to the Advocate office and searched the papers and got the balance amount and once again he approached the trial Court and obtained the certified copies on 06.08.2022.



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4. Even though the copies were made ready on 21.04.2022, he could get the copies only on 05.07.2022. Thereafter, he entrusted the papers with another Advocate at Madurai. After collected the money, he met the Advocate on 01.09.2022 and he directed the first petitioner to come on 22.10.2011. Therefore, there was a delay of 3773 days in filing the first appeal.

5. It is the stand of the respondents that the suit was dismissed on 11.04.2012. The appeal has been filed after the period of 10 years and 8 months. The allegation that the first petitioner entrusted the case papers to M.S.Balasubramania Iyer, on 05.07.2012 is false. Further, the allegation that he has paid the fees also false and the allegation that he met the Advocate is also false. The petitioners are actually obtained the certified copies only after ten years from the trial Court and thereafter, this appeal has been filed.

6. The learned counsel appearing for the petitioners would submit that the reasons assigned for the delay are *bona fide* and genuine and the first petitioner has entrusted the papers to the Advocate in time. However, the appeal has not been filed by the Advocate. Therefore, the delay has to be condoned and the petitioners may be permitted to agitate their substantive rights on merits.



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7. The learned counsel appearing for the respondents would submit that the reason for the delay has been invented for the purpose of filing an application, that too after the death of the very seasoned civil lawyer.

8. In the light of the above submissions, now the point for consideration in this application is whether the petitioners have shown sufficient cause to condone such huge delay?

9. It is an admitted fact that the suit has been filed by the petitioners for declaration and recovery of possession and the same has been dismissed as early as on 11.04.2012. The allegation that he has entrusted the copies to M.S.Balasubramania Iyer to file an appeal and he did not file the said appeal is without any basis. It is relevant to note that this Court has also taken note of the conduct of the parties and the lawyer, whose name is referred to in the petition, M.S.Balasubramania Iyer is a Renowned Senior Advocate and very experienced civil lawyer. He has not only practiced before the District Court but also this Court frequently till his death in the year 2022. This Court has also seen his conduct in appearing and conducting the cases before this Court. He was one of best civil lawyer seen by the Bench. This application has been filed after the



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death of the said Advocate, making allegation as if he has not filed the appeal from 2012. The said allegation in the opinion of this Court is nothing but invented only to show some sufficient cause to the huge delay. The seasoned civil lawyer was regular in all matters and pursued the matter even at the age of 87 before this Court. Therefore, the very allegation that he has not filed an appeal from 2012 is highly improbable and invented for the purpose of this case.

10. It is relevant to note that even the allegations are true that he has not filed an appeal, the very conduct of the petitioners remaining silent till his death for more than 10 years indicate that the petitioners have not come to the Court with *bona fide*. On perusal of the certified copies, it is seen that he has obtained the certified copies only after 10 years. But the allegation of the petitioners that he has collected the papers from the advocate office after his death. Therefore, when the suit itself was dismissed on 11.04.2012 ie., 10 years back, inventing new theory, making the false allegations against the very reputed lawyer indicate that the petitioners lack *bona fide*.

11. Therefore, this Court is of the view that when there is no sufficient cause shown for such huge delay and the matter has been decided 10 years



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back, it cannot be reopened. Hence, the application deserves to be dismissed.

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12. In view of the dismissal of the application in C.M.P.(MD).No.11041 of 2022, the Appeal Suit is rejected.

13. At this stage, the learned counsel appearing for the petitioners seeks permission of this Court to return the Court fee paid on the appeal.

14. Considering the request of the learned counsel for the petitioners, since the application in C.M.P.(MD).No.11041 of 2022 is rejected, the Registry is directed to refund the Court fee, as per law.

21.06.2023

akv

To

The District Court,
Fast Track Court,
Dindigul.



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N.SATHISH KUMAR,J.

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