



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

Friday, the Second day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice ABDUL QUDDHOSE

CMP(MD) No.12022 of 2022
in
SA(MD) SR No.72345 of 2022

R.SUBRAMANIYAM

... Petitioner / Appellant

Vs

1 GASPAR FATHINATHAN
REP THROUGH HIS POWER AGENT,
S.AROCKIASAMY

2 FRANCIS XAVIER GASPER
REPRESENTED THROUGH
HIS POWER AGENT K.RAYAR

3 MARIADASS GASPER
4 GASPER ANTONY MARY
5 ANTONY XAVIER SOOSAY
6 CHARLES ANTONY SOOSAY
7 CHRISTINA TERESA SOOSAY
(RESPONDENTS 4 TO 7 ARE REPRESENTED
THROUGH THEIR POWER AGENT
K.RAYAR

8 SOOSAY MARY

9 LEO PELICKS LOUIS

... Respondents / Respondents

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 275 days in filing the Second Appeal.

Prayer in SA(MD) SR.No.72345 of 2022:

To set aside the Decree and Judgment passed by the Additional District Court, Sivagangai, dated 21.10.2019 made in A.S.No.13 of 2017, confirming the Decree and Judgment made in O.S.No.66 of 2008 dated 23.08.2016 by the Subordinate Court, Devakottai by allowing this Second Appeal.

ORDER : This petition coming up for orders on this day, upon perusal of the petition and the affidavit filed in support thereof and



upon hearing the arguments of M/S S.MADHAVAN, Advocate petitioner and of Mr.J.ANANDAKUMAR, Advocate for the Respondents No.1, 2 and 4 to 7 and of not appeared for Respondents No.3, 8 and 9 in person or through by an Advocate, the court made the following order:-

WEB COPY This petition is filed to condone the delay of 275 days in filing this Second Appeal.

2. Certain medical reasons have been given by the petitioner, which included Covid-19 infection, for not filing the Second Appeal on time. But a counter affidavit has also been filed by the respondents 1, 2, 4 to 7 denying the contentions of the petitioner and they have categorically stated that no sufficient reasons have been given by the petitioner for condoning the inordinate delay of 275 days. They have also stated that no documentary evidence has been produced by the petitioner to prove that he was unwell during that period of time and that in a casual manner affidavit has been filed.

3. This Court has perused and examined the affidavit filed in support of this application as well as the counter affidavit filed by the respondents 1, 2, 4 to 7.

4. This Court is of the considered view that since medical reasons have been stated, this Court will have to allow this application by putting the petitioner on terms by directing the petitioner to pay cost in view of the long delay of 275 days in filing the Second Appeal. The courts below have concurrently held against the petitioner without considering the fact that the suit is one for partition and hence, an opportunity to be granted to the petitioner to file Second appeal.

5. For the foregoing reasons, this application seeking to condone the delay of 275 days in filing Second Appeal is allowed, subject to the condition the petitioner/ appellant deposits Rs.2500/- (Rupees two thousand and five hundred only) to the Women Advocate Association within a period of 2 weeks from the date of receipt of a copy of this order. On production of proof for having made the aforesaid payment by the petitioner, the Registry shall number the Second Appeal, if it is otherwise in order and list the same for admission.

sd/-

02/06/2023

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/06/2023

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

CM

<https://www.mhc.tn.gov.in/judis>



To

1.The Additional District and Sessions Judge,
Sivagangai.

2.The Subordinate Judge,
Devakottai.

Copy to:

1.The Officer Incharge,
Women Advocate Association,
Madurai Bench of Madras High Court, Madurai.

2.The Sub-Assistant Registrar,
AE Section,
Madurai Bench of Madras High Court, Madurai.

3.The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CMP (MD) No.12022 of 2022
in

SA (MD) SR No.72345 of 2022

Date :02/06/2023

ED/CG/SAR- (07/06/2023) 3P 6C