



C.M.P.No.7800 of 2021
in
S.A.SR.No.33985 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on:
29.04.2024**

**Pronounced on:
06.06.2024**

Coram

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.P.No.7800 of 2021
in
S.A.SR.No.33985 of 2021

1.N.Vishnu
2.Vaidegi

...Petitioners/Appellants

VS

1. C.Nasi
2. Padma
3. Vijiya Banu
4. N.Saravanan

...Respondents/Respondents

Prayer in C.M.P.No.7800 of 2021: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 1134 days in filing the second appeal against the judgment and decree dated 02.11.2016 passed in A.S.No.4 of 2015, on the file of the III Additional District Court, Vellore, Thirupattur, confirming the judgment and decree passed in O.S.No.6 of 2011 on the file of the Subordinate Court, Thirupattur.



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Prayer in S.A.SR.No.33985 of 2021: Second Appeal filed under Section 100 of C.P.C, against the judgment and decree dated 02.11.2016 passed in A.S.No.4 of 2015, on the file of the III Additional District Court, Vellore, Thirupattur, confirming the judgment and decree dated 09.07.2014 passed in O.S.No.6 of 2011 on the file of the Subordinate Court, Thirupattur.

For Petitioners : Mr.D.Senthil Kumar

For Respondent

Nos.2 and 3 : Mr.D.Chitramaragatham

ORDER

This Petition is filed to condone the delay of 1134 days in filing the second appeal against the judgment and decree dated 02.11.2016 passed in A.S.No.4 of 2015, on the file of the II Additional District Court, Vellore, Thirupattur, confirming the judgment and decree dated 09.07.2014 passed in O.S.No.6 of 2011 on the file of the Subordinate Court, Thirupattur.

2. The unsuccessful plaintiffs, who are the petitioners herein, have filed a suit for partition and separate possession of the plaintiffs' 3/4 share in

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the suit property and permanent injunction restraining the defendants/respondents 1 to 3 or their men or agents from alienating the suit property and other reliefs. On 09.07.2014, the trial Court dismissed the suit. Feeling aggrieved by the judgment and decree passed by the trial Court, the petitioners have filed the first appeal before the II Additional District Court, Vellore, Thirupattur and the First Appellate Court dismissed the appeal confirming the judgment and decree passed by the trial Court.

3. The learned counsel appearing for the petitioners would contend that the petitioners have entrusted the case to the counsel who has conducted the case on behalf of them before the trial Court and he used to meet him in person as well as conduct him over phone and ascertained the case status and the counsel used to reply that he will take care of the case and assured to inform further status to them. While so, during the second week of March 2019, when the petitioners have contacted their counsel, they were informed that the first appeal was dismissed and he forgot to inform the result of the case to them. Accordingly, the petitioners have requested their counsel to



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return the case bundle with the order copy and received the case bundle with the order copy only in the third week of March 2019. From the certified copy of the judgment and decree, it seems that on 07.05.2018, the counsel, who appeared before the trial Court, have applied the certified copy of the judgment and decree and the copy of the judgment was made ready only on 22.05.2018. However, during the third week of March 2019, the petitioners came to know about the dismissal of the first appeal and they have taken steps to file second appeal before this Court. In the meantime, untoward incident had occurred to the petitioners during the fourth week of March 2019 and thereafter, due to Covid-19, lock down was declared by the Government. Therefore, they could not file the second appeal in time. Hence, the delay of 1134 days has been occurred in filing the second appeal before this Court.

4. The learned counsel appearing for the respondents 2 and 3 has drawn the attention of this Court to the averments made in the counter and stated that the judgment was delivered as early as on 02.11.2016 and the



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copies were served on 22.05.2018, however, no sufficient explanation was given by the petitioners for condoning the inordinate delay of 1134 days in filing the second appeal. Hence, he prays for rejection of this petition.

5(a). After perusing the affidavit filed by the petitioners and the counter affidavit filed by the respondents 2 and 3 and hearing the rival submissions, I find that the second appeal is filed challenging the concurrent finding rendered by the trial Court and the First Appellate Court. Both the Courts below have concurrently rejected the claim of the petitioners. Certified copy of the judgment passed in the first appeal was made ready on 22.05.2018. It is a specific case of the respondents 2 and 3 herein that initially, the respondents 2 and 3/defendants 2 and 3 have filed a suit in O.S.No.19 of 2008 before the III Additional District and Sessions Court (Fast Track Court), Tirupattur, Vellore District, against the first defendant/first respondent, who is the father of the petitioners, for the relief of specific performance and they obtained decree in their favour. Since the suit cost was not ordered, an appeal has been filed in A.S.No.50 of 2011 by



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the respondents 2 and 3 before this Court and the same was allowed.

Thereafter, they filed execution petition and in the execution petition, the Executing Court, on 04.11.2019, directed the father of the petitioners to execute the sale deed, however, he has not chosen to execute the sale deed and remained *ex-parte*. Therefore, non-judicial stamp paper has also been called for and it has been deposited. At this juncture, this petition has been filed for prolonging the issue.

5(b). A perusal of the lower Court record reveals that after obtaining a decree for specific performance in O.S.No.19 of 2008 before the learned III Additional District Judge and Sessions Court (Fast Track Court), Tirupattur at Vellore, in order to defeat the fruits of the said decree, the present suit in O.S.No.6 of 2011 was filed before the Sub-Court, Tirupattur for partition and the same was dismissed. Thereafter, they preferred A.S.No.4 of 2015 and on dismissal, they have filed the present second appeal with the above said delay.



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6(a). Furthermore, it is seen from the records that in the specific performance suit, the Executing Court, after a long delay, directed the father of the petitioners to execute the sale deed as per decree in O.S.No.19 of 2008 which he failed to do so. Consequently, the Executing Court directed the respondents 2 and 3 herein [decree holders in the specific performance suit] in O.S.No.19 of 2008 to deposit the non-judicial stamp paper to obtain the sale deed through Court. Non-Judicial stamp paper were also deposited and now the sale deed by the Executing Court has to be registered.

6(b). Though the petitioners stated that they met with untoward incident during March 2019, no medical document has been filed and whatever happened to the health of the petitioners has also not been stated in the affidavit filed in support of this petition. Hence, in the absence of any specific reason for the inordinate delay of 1134 days, I find that the reason assigned by the petitioners does not amount to sufficient cause to condone the delay of 1134 days.



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7. At this juncture, in order to defeat the specific performance decree, the un-successful plaintiffs have filed this appeal with delay of 1134 days.

8. For the reasons stated supra, I find that no satisfactory explanation being provided by the petitioners herein for condoning the said delay.

9. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, the Second Appeal in S.A.SR.No.33985 of 2021 is rejected at SR Stage itself. No costs.

06.06.2024

Index:yes/no
Speaking Order/Non-Speaking Order
Neutral Citation:Yes/No

ssb/nvi



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To

1. The III Additional District Court, Vellore, Thirupattur.
2. The Subordinate Court, Thirupattur.
3. The Section Officer,
V.R. Section,
High Court, Chennai.



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RMT.TEEKAA RAMAN, J.

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