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CMP No.24902 of 2023 &.....
SA SR No.135155 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMP No.24902 of 2023 and
SA SR No.135155 of 2023

Judgment reserved on 05.04.2024	Judgment pronounced on 24.06.2024
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T.Veerabadran (died)

1.Amsavalli
2.Sivakumar
3.Sakthi
4.Nagarajan
5.Jayalakshmi

...

Petitioners

Vs

Kalyani (died)

1.Santhi
2.Muniandi
3.Vijayalakshmi
4.Yogam
5.Selvam @ Selvakumar

...

Respondents

Prayer in CMP No.24902 of 2023 : This petition has been filed under Order XLI Rule 3A of CPC to condone the delay of 1120 days in filing the above Second Appeal.



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Prayer in SA SR No.135155 of 2023 : This appeal has been filed against the judgment and decree dated 08.04.2019 made in A.S.No.134 of 2018 on the file of the Additional Sub Court, Mayiladuthurai confirming the judgment and decree in O.S.No.9 of 2008 dated 30.11.2017 on the file of District Munsif Court, Sirkali.

For Petitioners : Mr.M.Devaraj

For Respondents : Mr.A.Muthukumar for R1 to R3
Mr.T.Thiyagarajan for R4
No appearance for R5

ORDER

This petition has been filed to condone the delay of 1120 days in filing the above Second Appeal.

2. The learned counsel appearing for the petitioners/appellants contended that the respondents herein alongwith ther mother Kalyani (now deceased) filed O.S.No.9 of 2008 for recovery of possession of the 'B' schedule property.

3. The appellants / defendants filed written statement stating that suit is bad for non-joinder of necessary parties and also barred by limitation.



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4. The Trial Court dismissed the suit on 30.11.2017 and directed the defendants/petitioners to hand over the possession of suit 'B' schedule property to the respondents herein as well as the 4th respondent, within two months from the date of the decree.

5. Aggrieved against the said judgment and decree, the petitioners herein preferred appeal in A.S.No. 134 of 2018 on the file of the Additional Sub Court, Mayiladuthurai. The learned Subordinate Judge, on consideration of both oral and documentary evidence and independent appraisal of evidence on record, dismissed the appeal on 08.04.2019. Hence, the present appeal has been filed after four years with a petition to condone the said delay.

6. According to the petitioners, due to the intervention of Covid-19, they could not file the appeal in time. The period of limitation was extended by the Hon'ble Supreme Court from 15.03.2020 to 28.02.2022.



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7. The learned counsel for the respondents herein, based upon the counter affidavit would contend that pursuant to the grant of the decree by the Trial Court, confirmed by the Lower Appellate Court, they moved Execution Petition No.25 of 2018 wherein the parties are served with notice. The wife of the third petitioner herein filed obstruction petition under Order XXI Rule 97 of CPC and the same was dismissed and she preferred CMA. Hence, at this juncture, the petitioners cannot be allowed to claim that they are not aware of the passing of the order by the Lower Appellate Court.

8. Heard the learned counsel for the parties and perused the records.

9. The decree in O.S.No.9 of 2008 by the learned District Munsif, Sirgali is for recovery of possession. The same was confirmed in A.S.No.134 of 2018 by the learned Additional Subordinate Judge, Mayiladuthurai. This Second Appeal has been filed after a period of four years with a petition to condone to delay of 1120 days in preferring the appeal.



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10. The main ground on which the petitioners seek condonation of delay is due to intervention of Covid-19 and no knowledge about passing of orders by the Lower Appellant Court. After exclusion of period of limitation by the Hon'ble Supreme Court namely 15.03.2020 to 28.02.2022, on perusal, I find that the certified copies of the judgment and decree of the courts below was received on 10.01.2022. Therefore, the reason assigned by the petitioners for delay in filing the appeal does not render any help to them. The petitioners have to explain the reason for the delay in filing the appeal from the year 2002 till 13.10.2023. Absolutely, there is no explanation, much less than, sufficient cause was exhibited by the petitioners.

11. At this juncture, it remains to be stated that the respondents herein as plaintiffs in the suit, after obtaining decree in the suit, have filed Execution Petition in E.P.No.25 of 2018 before the District Munsif Court, Sirklai for delivery of possession. The wife of the third petitioner herein namely Rathika filed petition under Order XXI Rule 97 CPC claiming that she had been in possession and enjoyment of the suit 'B' schedule property



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fore more than twelve years. The said petition after contest was dismissed on 20.09.2021. Aggrieved against the said order, the said Radhika wife of the third petitioner herein preferred CMA No.1 of 2021 and the same is pending. Hence, I find that the petitioners herein cannot aver that they had no knowledge about passing of order by the Lower Appellate Court. Besides, one of the family members of the petitioners have filed obstruction petition under Order XXI Rule 97 of CPC and the same was rejected and the appeal in CMA is pending.

12. In the above circumstances, I find that the petitioners have indulged in suppression of material facts about filing of execution application, as stated supra and CMA as mentioned supra. The petitioners have not averred any sufficient cause to condone the delay, much less any reason for condoning the delay of 1120 days in preferring this Second Appeal. Accordingly, in the absence of any sufficient cause for condoning the delay, I am not inclined to allow this petition.



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13. In the result, **this Civil Miscellaneous Petition is dismissed** at the SR stage itself.

24.06.2024

rg

To

1.The District Munsif Court,
Sirkali

2.The Additional Subordinate Judge,
Mayiladuthurai.

3.The Section Officer
VR Section, High Court,
Madras.



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RMT.TEEKAA RAMAN, J.

rgr

Order in
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24.06.2024