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C.M.P. No. 28700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.P. No. 28700 of 2023

in

S.A. Sr. No.149279 of 2023

C.Srinivasan

...Appellant

Vs.

T.V.Oyyaram

...Respondent

Prayer: Petition is filed to condone the delay of 106 days in filing the Second Appeal against the Judgement and Decree in A.S.No.16 of 2022 on the file of the II Additional District Judge, Vellore dated 23.03.2023 confirming the Judgement and Decree passed in O.S.No.69 of 2018 on the file of the Sub Court, Arakkonam dated 05.04.2022.

For Appellant : Mr. S.Vijayanand

For Respondent : Mr. Jeremiah Gregory John.



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JUDGMENT

The above petition is filed for condoning the delay of 106 days in filing the above Second Appeal.

2. In the affidavit filed in support of the said petition, the petitioner would submit that the Judgment was pronounced in A.S.No.16 of 2022, by the learned II Additional District Judge, Vellore at Ranipet on 23.03.2023. A copy application was filed by his counsel on 24.03.2023 and the copy was made ready on 05.05.2023 and certified copies were received by them on 08.05.2023. The Second Appeal had to be filed on or before 05.08.2023, on which date, the 90 day period expired.

3. The only reason that has been given for the delay is that the petitioner is doing contract business, which entailed him to move from one place to another and that he had no support from his sons who are



working elsewhere and from his wife who was bed ridden. However, none of these statements have been proved.

4. The respondent had filed a counter inter alia contending that the petitioner had come to the Court suppressing the true facts. The respondent would submit the petitioner's contention that he was not able to file an appeal on account of the reasons mentioned in paragraph no.7 of the affidavit is false.

5. The respondent would submit that he had filed an execution petition in E.P.No.74 of 2022 and in the said execution proceedings notice was ordered on 03.09.2022. The respondent would submit that the petitioner had entered appearance in the execution proceedings on 09.12.2022. The Executing Court had on 01.06.2023 ordered attachment and the same has also been effected on 10.10.2023. The Second Appeal has been filed only after the attachment had been effected i.e., on 17.11.2023. Therefore, the reasons given is absolutely false and self serving.



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6. The learned counsels have also made their submissions on the basis of their respective affidavit.

7. Heard the learned counsels and perused the records.

8. Though Courts have been liberal in condoning the delay, however, where the petitioner comes to the Court with a false case or by suppressing facts, then even a days delay should not be condoned. In the instant case, the Judgement had been passed in A.S.No.16 of 2022 by the II Additional District Judge, Vellore on 23.03.2023. The execution proceedings had been initiated in the year 2022 itself and the petitioner had also entered appearance before the Executing Court on 09.12.2022 and has been contesting the execution petition. However, the Second Appeal has been filed only on 17.11.2023, nearly a year after notice in the execution proceedings.

9. The affidavit filed in support of the condone delay petition is



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absolutely silent about the pending execution proceedings. Steps to initiate the Second Appeal has also been taken only after the year of attachment had been effected. Therefore, the reasons given for the delay are absolutely false and the petitioner who has been contesting the execution proceedings has deliberately not proceeded with filing of the Second Appeal and I see no reason to condone the delay.

10. Accordingly, the Civil Miscellaneous Petition is dismissed. Consequently, the Second Appeal is rejected at the SR stage itself. No costs.

26.02.2024

Index : Yes/No
Internet : Yes/No
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To

1.The II Additional District Judge,
Vellore.

2.The Sub Court,
Arakkonam.



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P.T. ASHA, J,

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