



CMP(MD)No.3314 of 2014 in SA(MD)SR No.89648 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/08/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMP(MD)No.3314 of 2024

in

SA(MD)SR No.89648 of 2023

Subbiah (Died) - (D1)

Paramasivam (Died) (D2)

1.Santhanakani

2.Eswari

3.Anandavalli

: Appellants 1 to 3/
Appellants/Defendants
(Lrs of D1 Subbiah)

4.Alanthammal

5.Ponnammal

6.Santhana Lakshmi

7.Muthulakshmi

: Appellants 4 to 7/NIL/
(Lrs of D2 Paramasivam)

Vs.

Chitraivel (Died) (Plaintiff)

1.Ramachandran

2.Pratty

3.K.Subbiah

: Respondents 1 to 3/
Respondents/
Defendants 3 to 5

(Respondents 1 to 3 exparte
Both the courts)

4.Vallayammal

5.Sundarrajan

6.Babu Rajan

7.Maheswari

8.Rajarajan

9.Mahendran

10.Vijayarajan

11.Malaimathi

: Respondents 4 to 11/
Respondents 4 to 11/
Lrs of the 1st Respondent/
Plaintiff



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PRAYER:- Civil Miscellaneous Petition is filed under section 5 of the Limitation Act, to condone the delay of 969 days in filing the above said second appeal against the judgement and decree, dated 24/11/2019 passed in AS No.18 of 2012 on the file of the Sub Court, Thoothukudi, confirming the judgement and decree, dated 29/07/2011 passed in OS No.68 of 2008 on the file of the Additional District Munsif, Thoothukudi.

For Petitioners	: Mr.M.R.Sreenivasan
For R1 to R3	: Ex-parte
For R4 to R11	: Mr.S.Kadarkarai

O R D E R

This Civil Miscellaneous Petition is filed seeking to condonation of the delay of 969 days in preferring the second appeal.

2.The facts in brief:

Suit in OS No.68 of 2008 was filed by the one Chitraivel, who is the respondent herein shown as dead, seeking the relief of declaration and permanent injunction. The suit was decreed as prayed for with costs.



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3. Against which, appeal was preferred by the defendants as the legal heirs of the deceased first appellant against Chitraivel and others filed A.S No.18 of 2012. That was dismissed on 24/11/2019 by the Sub Court, Thoothukudi. Against which, second appeal SR is filed by the petitioners.

4. Seeking condonation of delay of 969 days, this petition is filed.

5. The brief averments stated in the affidavit:-

The judgment of the appellate court was rendered on 24/11/2019, but the result of the judgment was not intimated to them by their counsel. Probably because of the pandemic situation prevailing during that period. Since they were not informed the result of the appeal process, they could not engage an Advocate for preferring the second appeal.

6. The learned counsel appearing for the petitioners would submit that before the appellate court, they did not give any proper reply, so they engaged another Advocate. On his verification only, it was found that the appeal was dismissed on 24/11/2019. So, copies were applied for and copies were delivered to them on



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25/07/2003. So, there was a delay of 969 days in preferring the second appeal. So, this petition.

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7.Counter is filed by the respondents stating that the reasons set out in the affidavit are not true and correct. The judgment was pronounced in the month of June 2019. But the pandemic situation started at the end of 2019. Lock-down was imposed in the middle of 2021. So, the reasons set out in the petition are not correct.

8.Heard both sides.

9.The learned counsel appearing for the petitioners would reiterate the very same reasons set out in the affidavit. The very reason set out in the affidavit is that the Advocate on record appeared for them did not intimate the dismissal of the appeal. So, they have to arrange and engage some other Advocate. Finally, copies were delivered to him on 25/07/2003.

10.This sort of evasive reasons cannot be relied. The petitioners ought to have pursue the matter properly before the appellate court. Without their instructions, the learned counsel on record would not have argued the matter before the appellate court. More-over, it is the duty of the petitioners to follow the stage of the case.



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11.It appears that they were not careful in perusing the matter and getting instructions in time. Regarding the pandemic situation, as stated in the counter, at the time of dismissal of the appeal, there was no pandemic situation. So, the reason is not available. Without proper reasons, this petition is filed in a casual manner. Such sort of lethargic attitude cannot be appreciated.

12.The suit is of the year 2008. Even after a lapse of several years, the petitioners wants to drag on the matter endlessly. When proper reason is not assigned by the petitioners, then the petition filed by the petitioners is without any merits.

13.For all the reasons stated above, I find absolutely no reason to condone the delay. Accordingly, this petition is **dismissed**.

02/08/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Sub Court, Thoothukudi.
- 2.The Additional District Munsif,
Thoothukudi.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ILANGOVAN, J

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