



C.M.P(MD)No.3163 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.12.2024

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THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.P(MD)No.3163 of 2023
in
C.M.S.A(MD)No.SR 8095 of 2023

Palaniammal

... Petitioner/Appellant

-Vs-

1.Paramaraj

2.Perumal

... Respondents/Respondents

PRAYER in C.M.P(MD)No.3163 of 2023: Civil Miscellaneous Petition is filed under Order 41 Rule 3(a) C.P.C., to condone the delay of 1288 days in filing the above CMSA(MD)No.SR 8095 of 2023.

Prayer in C.M.S.A(MD)No.SR 8095 of 2023: This Civil Miscellaneous



C.M.P(MD)No.3163 of 2023

WEB COPY

Appeal is filed under Section 100 of C.P.C., against the fair and executable order dated 25.04.2019 made in C.M.A.No.3 of 2017 on the file of the Additional District Judge (Fast Track Court), Theni, confirming the fair and executable order dated 24.10.2016 made in E.A.No.78 of 2009 in E.A.No. 166 of 2005 in E.P.No.89 of 2004 on the file of the Subordinate Court, Uthamapalayam.

For Petitioner : Mr.R.Suryanarayanan
For R1 : Mr.R.Chinna Ponnu

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 1288 days in filing the appeal.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.



C.M.P(MD)No.3163 of 2023

WEB COPY

3.The second respondent had filed a suit in O.S.No.82 of 2001 before the Sub-Court, Uthamapalayam, for the relief of specific performance, on the basis of sale agreement executed between his father and the first respondent. The said suit was decreed ex-parte on 27.08.2002. Pursuant to the same, the second respondent filed an execution petition in E.P.No.89 of 2004 and got the sale deed executed by his father. Thereafter, the second respondent filed a petition in E.A.No.166 of 2005 for delivery, in which, the petitioner filed a petition in E.A.No.78 of 2009 under Order 21 Rule 97 and 101 C.P.C., to record her obstruction.

4.In the meantime, the petitioner filed a suit in O.S.No.139 of 2009 before the District Munsif Court, Uthamapalayam, for partition. When the said suit was pending, E.A.No.78 of 2009 in E.A.No.166 of 2005 in E.P.No.89 of 2004 was filed by the petitioner to obstruct the delivery, which was dismissed on 24.10.2016. She preferred an appeal in C.M.A.No.3 of 2017 before the Additional District Court, Theni, was dismissed on 25.04.2019. Aggrieved, the present appeal is filed.



C.M.P(MD)No.3163 of 2023

WEB COPY

5. According to the petitioner, C.M.A.No.3 of 2017 was dismissed on 25.04.2019 and hence, the appeal has to be filed within 90 days from the date of the said order. Since she was suffering from viral fever along with joint and ankle pain, she was not able to contact her advocate for getting the copies. Thereafter, she got the copy of the order on 06.09.2019 passed in C.M.A.No.3 of 2017. She is not able to obtain the order passed in E.A.No. 78 of 2009 due to non-tracing of bundle. In the meantime, due to Covid-19 lock-down, the Court was not functioning. Therefore, she got the copy on 25.01.2023. Hence, the delay of 1288 days has occurred.

6. I have carefully considered the submissions made by either side and also perused the materials available on record.

7. The delay caused is for a long period. The reason assigned for the delay caused are not convincing and acceptable, as the delay period is more than three years and six months.



C.M.P(MD)No.3163 of 2023

WEB COPY

8.Considering the facts and circumstances of the case, as the petitioner lacks bonafides and hence, this petition stands dismissed. Consequently, the Civil Miscellaneous Second Appeal is rejected at SR stage itself. No costs.

31.12.2024

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

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To

1.The Additional District Judge
(Fast Track Court),
Theni.

2.The Subordinate Court,
Uthamapalayam.



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C.M.P(MD)No.3163 of 2023

R. KALAIMATHI,J.

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