



CMP(MD) No.4717 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Friday, the Eighth day of November Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice KRISHNAN RAMASAMY

CMP(MD) No.4717 of 2024

in

SA(MD)SR.No.10978 of 2024

MANICKAM (DIED)

1 JEYAMARY,

2 ROSELIN MARY SIMIYONRAJ

3 SANTHI SELVARAJ

4 IDA VINNARASI,

5 BRITTI MARIYA SELVAM

... PETITIONERS/ APPELLANTS

Vs

ARULANAND (DIED)

1 MARIRAJ ALIAS MARISELVAM

2 EMILY,

3 BRITO

4 AROKIA MARY,



CMP(MD) No.4717 of 2024

5 T.ELEZABETH RANI,

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6 M.EMILY

... RESPONDENTS/RESPONDENTS

Civil Miscellaneous petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to Condone the delay of 610 days in filing the above Second Appeal against the Judgment and Decree dated 05.09.2018 in AS No.24 of 2016 on the file of Learned Sessions Judge, Fast Track Mahila Court, Sivagangai confirming the Judgment and Decree dated 04.12.2015 in OS No.01 of 2008 on the file of District Munsif Court, Devakottai.

PRAYER in SA(MD)SR.No.10978 of 2024:

To call for the records relating to the Judgment and decree dated 05.09.2018 in A.S.No.24 of 2016 on the file of Learned Sessions Judge, Fast Track Mahila Court, Sivagangai confirming the Judgment and Decree dated 04.12.2015 in O.S.No.01 of 2008 on the file of District Munsif Court, Devakottai set aside the same and consequently allowed the second appeal.

ORDER : This Civil Miscellaneous petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.J.ANANDKUMAR, Advocate for the petitioner and of Mr.K.CHENGIZKHAN, Advocate for the respondents 1 & 6 and none appeared either in person or through by an advocate on behalf of the Respondents 2 to 5, the Court made the following order:-

This miscellaneous petition is filed to condone the delay of 610 days in filing the above second appeal.

2. Learned counsel for the petitioners would submit that in the present case, the appeal suit was dismissed on 05.09.2018 and the judgment copy was made ready



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only on 14.03.2022. In the meanwhile, the first plaintiff / husband of the first petitioner / second plaintiff and father of the petitioners 2 to 5 died on 08.06.2020 and in the year 2022, their counsel, who appeared before the Lower Court also died. Since the husband of the first petitioner and their counsel also died, she was unaware of the case status. Only on 16.10.2023, when she received a notice from the office of the Revenue Divisional Officer, she came to know about the dismissal of the appeal suit. Since their counsel died, she could not trace out the case bundle and only during February, 2024, they could trace out the case bundle and thereafter only, they could engage a counsel and file the second appeal as against the Judgments and Decrees passed by the Court below only on 12.03.2024. Therefore, the delay of 610 days had occurred in filing the above appeal.

3. Learned counsel appearing for the respondents 1 and 6 would vehemently oppose this condone delay application. According to him, even though the appeal suit was dismissed on 05.09.2018, the copy of Judgment was made ready as early as on 14.03.2022. Nothing prevented the petitioners to file second appeal immediately thereafter. However, they filed this second appeal a delay of nearly two years. Therefore, he prayed for dismissal of this application.



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4. Taking into consideration the submissions made by the learned counsel for the petitioners and the learned counsel appearing for the respondents 1 and 6, this Court is of the view that the Judgment in the appeal suit was made ready on 14.03.2022 itself, though it was dismissed on 05.09.2018. If the petitioners wanted to file second appeal, they could have filed the appeal immediately thereafter. However, they have not done so. Only after nearly two years, they preferred this appeal. The petitioners claim that since the husband of the first petitioner / second plaintiff and father of the petitioners 2 to 5 died on 08.06.2020 and their counsel also died in the year 2022, they did not know the status of the appeal suit and when the RDO proceedings were initiated by the respondents for mutation of revenue records, they came to know about the dismissal of the appeal suit. In such circumstances, though the delay of 610 days in filing the above second appeal is inordinate delay, yet the reasons adduced by the petitioners in the accompanying affidavit appear to be genuine. Therefore, this Court is of the view that the delay can be condoned on certain terms, in the interest of justice.

5. Accordingly, this civil miscellaneous petition is allowed and the delay of 610 days in filing the above second appeal is condoned subject to the payment of **Rs.10,000/- (Rupees ten thousand only)** by the petitioners to the credit of the District Siddha Medical Officer CCRI PKM, Account No.10767823177, IFSC Code : SBIN0000898,



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MICR CODE : 625002601, Branch: SBI Periyakulam, within a period of two weeks from the date of receipt of a copy of this order. In default, this miscellaneous petition shall stand dismissed automatically without any further reference to this Court.

sd/-
08/11/2024

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/11/2024

Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

KRK
TO

- 1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, SIVAGANGAI.
- 2 THE DISTRICT MUNSIF
DEVAKOTTAI.

COPY TO:
THE DISTRICT SIDDHA MEDICAL OFFICER,
CCRI, PERIYAKULAM.

ORDER
IN
CMP(MD) No.4717 of 2024
in
SA(MD)SR.No.10978 of 2024
Date :08/11/2024

SS/GSV/SAR- /21/11/2024/ 5P/4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023