



C.M.P(MD)No.11382 of 2024

WEB COPY

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

Tuesday, the Twenty Ninth day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P.VADAMALAI

C.M.P(MD)No.11382 of 2024

in

A.S(MD)SR.No.42403 of 2024

M.RAVIKUMAR

... PETITIONER/ APPELLANT

Vs

VINOTH @ ANJAI VINOTH

... RESPONDENT/RESPONDENT

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 660 days in filing the above first appeal and thus render justice.

PRAYER IN A.S(MD)SR.No.42403 of 2024:

Pleased to call for the records and to set aside the Judgment and Decree dated 12.04.2022 passed in O.S.No.196 of 2017 on the file of the II Additional District Court, Tiruchirappalli and thereby allow this appeal.

ORDER : This 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

<https://www.mhc.tn.gov.in/judis>



C.M.P(MD)No.11382 of 2024

Mr.M.KARUPPASAMY, Advocate for the petitioner and of Mr.JEGAN MANOHAR, Advocate on behalf of the Respondent, the court made the following order:-

Reserved on : 24.09.2024
Pronounced on : 29.10.2024

This Civil Miscellaneous Petition is filed to condone the delay of 660 days in filing the first appeal against the judgment and decree, dated 12.04.2022 passed in O.S.No.196 of 2017 on the file of the II Additional District Court, Tiruchirappalli.

2. The petitioner has stated the reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition as follows:-

The respondent has filed a suit in O.S.No.196 of 2017 before the II Additional District Court, Tiruchirappalli alleging that the petitioner borrowed Rs.10 lakhs from the respondent for his family and business needs. The petitioner has contested the suit. The trial Court decreed the suit on 12.04.2022. Immediately, the petitioner filed a copy application on 18.04.2022 and certified copies of the judgment and decree were delivered on 08.06.2022. Thereafter, the petitioner approached his counsel and instructed him to take steps for preferring the appeal. Unfortunately, the appeal papers were misplaced by the counsel during shifting of his office. In the meantime, the respondent filed an Execution Petition in E.P.No.104 of 2023 in O.S.No.196 of 2017 and the petitioner filed a detailed counter. After taking sincere



C.M.P(MD)No.11382 of 2024

WEB COPY

efforts, the appeal papers were traced out in the last week of March 2024 and hence, there was happened 660 days delay in filing the first appeal. The petitioner has a good case in appeal. Therefore, the delay may be condoned.

3. The respondent has filed a counter and objected the petition. The reason that his case bundle was misplaced in the counsel's office is not a sufficient reason to condone the delay. Filing the appeal in time is a rule, while delay is the exception. When the petitioner seeks an exception, he must prove each and every days delay. Even though the petitioner stated that the case bundle was traced in the last week of March 2024, the delay condone application was filed only on 21.06.2024 and there is no explanation for three months. Hence, the petitioner has no valid reason and the petition is liable to be dismissed.

4. Heard both sides and perused the records in this petition. It is clear that the respondent filed a suit for recovery of money and the suit was decreed and after the decree, the respondent filed an execution petition and the same is pending. It is also clear that the petitioner has also appeared in E.P. and filed a counter. The petitioner states that he gave instruction to his counsel for preferring the appeal and the case bundle was misplaced in the counsel's office while shifting the office.

5. On perusal of records, the trial Court passed judgment on 12.04.2022. The petitioner has filed the copy application on 18.04.2022 for preferring the appeal and



C.M.P(MD)No.11382 of 2024

WEB COPY

the certified copies were delivered on 08.06.2022. The copy application for preferring the appeal was filed in time. It is a principle that the rights of litigants should not be affected by the acts of counsel. It is a settled principle that every litigant has right to prefer the appeal. Section 5 of the Limitation Act was enacted to enable the Court to do substantial justice. The purpose of the Court is to render justice and there will be no bar for condoning the delay if sufficient reason is stated. It is also a settled principle of law that the Court should take a liberal, pragmatic, justice-oriented and non-pedantic approach while dealing with an application under Section 5 of the Limitation Act.

6. The petitioner has actively filed the copy application for preferring the appeal in time, which is not in dispute. The right of appeal could not be curtailed only upon the reason of delay and every litigant should be given an opportunity of hearing in the appeal. The petitioner has preferred the first appeal before the first Appellate Court, which is the last Court of fact finding. There will be no prejudice to the respondent if the petitioner is given a chance to put forth his case in the appeal. Therefore, this Court is of the opinion that the petitioner has to be given an opportunity to prefer the first appeal and at the same time, the inconvenience caused to the respondent has to be compensated. Considering the above facts and circumstances, the delay is to be condoned by imposing certain conditions to meet



C.M.P(MD)No.11382 of 2024

out the inconvenience caused to the respondent.

WEB COPY

7. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay a cost of Rs.2,000/- (Rupees Two Thousand only) to the respondent on or before 19.11.2024, failing which this Civil Miscellaneous Petition shall stand automatically dismissed without any further reference to this Court.

sd/-

29/10/2024

/ TRUE COPY /

/11/2024

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

VSD

TO

THE II ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI.

ORDER

IN

C.M.P(MD)No.11382 of 2024

in

A.S(MD)SR.No.42403 of 2024

Date :29/10/2024

SA/SKN/SAR. /11.11.2024/5P/2C

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