



CMP(MD) No.11031 of 2023

WEB COPY

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

Monday, the Twelfth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CMP(MD) No.11031 of 2023

IN

SA(MD) No.406 of 2020

NEDUNCHEZHIAN

... PETITIONERS/ APPELLANTS

Vs

1 DURAIRAJAN

2 CHITHRA

... 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 18 days in filing the above restoration petition in S.A.(MD)No.406 of 2020.

Prayer in SA(MD). 406/ 2020 :

To set aside the Judgment and Decree dated 17.07.2020 passed in A.S.No.50 of 2019 on the file of the Honble Additional Sub Judge, Kumbakonam confirming the Judgment and Decree dated 15.11.2018 passed in O.S.No.412 of 2012 on the file of the Learned Principal District Munsif Judge, Kumbakonam.

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 M/S.P.T.RAMESH RAJA, Advocate for the petitioner and of MR.P.THIYAGARAJAN, Advocate on behalf of the Respondents, the court made the following order:-



WEB COPY



CMP(MD) No.11031 of 2023

Reserved on : 29.01.2024

Pronounced on : 12.02.2024

This Civil Miscellaneous Petition is filed to condone the delay of 18 days in filing the restoration petition in S.A.(MD) No.406 of 2020.

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

The petitioner has filed the suit in O.S.No.412 of 2012 before the District Munsif Court, Kumbakonam against the respondents and the same was dismissed. Thereafter, the petitioner preferred the first appeal in A.S.No.50 of 2019 before the Additional Sub Court, Kumbakonam and the said appeal was also dismissed on 17.07.2020. Being aggrieved by the dismissal, the petitioner has preferred the Second Appeal in S.A(MD)No.406 of 2020 before this Court. The petitioner proposed to engage senior counsel and hence, the counsel on record handed over the bundle to the petitioner. Whiles, when the Second Appeal came up for hearing on 21.06.2023, the counsel on record reported 'no instruction' thereby the Second Appeal was dismissed on 23.06.2023 for non-prosecution. Due to non-engagement of senior counsel and also due to financial crisis, there is a delay of 18 days in filing this petition for restoration. The petitioner has a fair chance of success in the Second Appeal and the petitioner is ready to contest the case.



CMP(MD) No.11031 of 2023

WEB COPY
follows:

3. The respondents filed a counter and objected the petition and stated as follows:

The petitioner has appeared on all hearings in the Second Appeal and on 21.06.2023 the counsel for the petitioner reported 'no instruction' and hence, lastly the Second Appeal was posted to 23.06.2023 with specific direction that the case would be listed under the caption 'for dismissal' for hearing on 23.06.2023. Since the petitioner has no merit in the Second Appeal, he has not been taking interest in conducting the Second Appeal. Hence, the petition has no valid reason and the same is liable to be dismissed.

4. Heard both side and perused the records in this Civil Miscellaneous Petition.

5. The learned counsel for the petitioner has submitted that because of communication gap the petitioner was unable to engage senior counsel for giving instruction and the Second Appeal was dismissed for non-prosecution. The petitioner is the bona fide purchaser of the suit property from its title holder who was allotted the suit property for his share. Therefore, the petitioner may be given a chance in contesting the Second Appeal. On perusal of counter affidavit, the respondents has mainly objected that the petitioner has known about the stage of the case as his counsel on record reported 'no instruction' on 21.06.2023 and the same was admitted in his affidavit, but the petitioner states that due to non engagement of



CMP(MD) No.11031 of 2023

WEB COPY

senior counsel and due to financial crisis his case could not be represented. The Second Appeal was taken on file and the same was dismissed for non prosecution on 23.06.2023.

6. It is a settled principle every litigant has right to prefer the appeal and the appeal has to be disposed on merits. Though the counsel on record reported no instruction, the petitioner averred that he wanted to engage senior counsel, the existing counsel on record handed over the case bundle to him. He further averred that due to financial crisis he could not engage senior counsel. There is a delay of only 18 days in filing the petition for restoration. Mere delay would not affect the right of a litigant and the right of appeal to a party should not be affected. The rival contentions of both parties regarding subject matter of suit and appeal are not necessary to be discussed in this delay condone petition. This Court is of the opinion that the petitioners have to be given an opportunity to contest the Second Appeal and at the same time the inconvenience caused to the respondents has to be compensated. Considering the above facts and circumstances, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the respondents.

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 respondents on or before 26.02.2024, failing which the petition shall stand



CMP(MD) No.11031 of 2023

automatically dismissed without further reference to this Court.

WEB COPY

8. On such payment/deposit being made within the stipulated time, Registry is directed to number the restoration petition, if it is otherwise in order and list the matter on 04.03.2024.

sd/-
12/02/2024

/ TRUE COPY /

/02/2024
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

TO

1 THE ADDITIONAL SUBORDINATE JUDGE,
KUMBAKONAM.

2 THE PRINCIPAL DISTRICT MUNSIF,
KUMBAKONAM.

COPY TO

1 THE SUB ASSISTANT REGISTRAR,
A.E.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

2 THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



WEB COPY



CMP(MD) No.11031 of 2023

ORDER
IN
CMP(MD) No.11031 of 2023
IN
SA(MD) No.406 of 2020
Date :12/02/2024

RS/GS/SAR-(15.02.2024) 6P 5C
Madurai Bench of Madras High Court is issuing
certified copies in this format from 17/07/2023