



CMP(MD). No.9479 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Tuesday, the Twentieth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. DHANABAL

CMP(MD). No.9479 of 2022
in
CROS.OBJ(MD)NO.19 OF 2013

- 1.Malarkann,
- 2.Manimaran,
- 3.M.Manimegalai,
- 4.M.malaiyarasu Pandi,

... Petitioners/Cross Appellants/Respondent 3 to 6

Vs

- 1 M. Manickavasagam,
S/o. Malaikan
 - 2 Minor. Ravikumar,
S/o. Manickavasagam
 - 3 Minor. Aishwarya,
D/o. Manickavasagam
- Minor Respondents 2 and 3 are Represented through their
Mother and Next Friend Dhanalakshmi W/o.Manickavasagam

... Respondent2&3/Respondent2&3/Respondent1&2

Prayer :-

Civil Miscellaneous Petition is filed Under Section 5 of the Limitation Act to condone the delay of 332 days in filing the application to set aside the order dated 28-11-2019 passed by this Honourable Court in the above Cross Objection (MD).No. 19 of 2013.



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Prayer in CROS.OBJ(MD).19/2013:

Appeal filed under Order XLI, Rule 22/r/w Section 9(1)&(2) C.P.C., against the judgement and decree, dated 18.07.2012, passed in O.S.No.63 of 2010 by the VI Additional District Court, Madurai.

Prayer in AS(MD).33/ 2013:

Appeal Suit filed under Section 96 r/w Order 41 rule 1 & 2 of the C.P.C., against the judgement and decree, dated 18.07.2012, passed in O.S.No.63 of 2010 by the VI Additional District Court, Madurai and set aside the same.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s. R.Ponkarthikeyan, Advocate for the Petitioner and of M/s. G.Prubhu Rajadurai For R1, M/s.R.Aravindan, Advocate for the respondents, For R2 & R3, this Court made the following order:

“This petition is filed to condone the delay of 332 days in filing the application to set aside the order dated 28.11.2019 made in Cross Objection (MD)No.19 of 2013.

2. According to the petitioners, they have already engaged a counsel for appearing on behalf of them. The date of hearing of the Cross Objection was not properly intimated to the petitioners by the counsel and thereafter only, they came to know about the dismissal of the cross objection. Therefore,

there is delay of 332 days in filing this restoration petition.



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3. The respondents 2 and 3 filed counter stating that the reasons stated by the petitioners are not genuine and the petitioners failed to furnish proper particulars and not given proper reasons for the inordinate delay. Hence, this petition is liable to be dismissed.

4. The learned counsel for the petitioners would contend that the petitioners already engaged a counsel and the date of hearing was not informed properly and further they were also unable to contact their counsel in time and thereby, the delay had occurred. Unless the petition is allowed, the petitioners will be put to heavy loss which cannot be compensated in any manner.

5. The learned counsel for the respondents would contend that the reasons stated by the petitioners is not genuine and the petitioners are not properly explained the delay and hence the petition is liable to be set aside.

6. Considering the reasons stated in the affidavit that the previous counsel did not inform the date of hearing to the



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petitioners and they were also unable to contact their counsel in time and considering the number of days in delay and in order to afford an opportunity to the parties, it is appropriate to allow this petition. Accordingly, the delay of 332 days in filing the restoration petition is condoned and this Civil Miscellaneous Petition is allowed.

7. The Registry is directed to restore the Cross Objection (MD)No.19 of 2013 and list the same in the usual course. ”

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/02/2024

Sub Assistant Registrar
(CS-I/II/III/IV)

TO

The VI Additional District Judge,
Madurai.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.



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ORDER DATED : 20/02/2024

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ORDER

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CMP(MD). No.9479 of 2022

in

CROS.OBJ(MD)NO.19 OF 2013

SI-(27.02.2024) 5P/ 3C

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