



CMP(MD)No.14619 of 2023

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

Dated: 04/03/2024

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

**CMP(MD)No.14619 of 2023
in
CRP(MD)SR No.76468 of 2023**

**Varadharajan (Died)
Neelavathi (Died)**

**1.Jayapal
2.Jayakumar
3.Jayaseelan**

: Petitioners/ Petitioners

Vs.

Narayanasamy Naidu (Died)

**1.Nathan
2.Rajagopal
3.Baskaran
4.Balagangadhara Thilagar
5.Manikandan**

: Respondents/ Respondents

PRAYER in CMP(MD)No.14619 of 2023:-

Civil Miscellaneous Petition has been filed under Section 5 of the Limitation Act to condone the delay of 1646 days in filing the Civil Revision Petition against the fair and decretal order in EP No.50 of 2013 in OS No.606 of 1986, dated 08/01/2019 by the Principal District Munsif, Kumbakonam.



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PRAYER in CRP(MD)SR.No.76468 of 2023:-

To set aside the Fair and Decreetal order dated 08.01.2019 by the Learned Principal District Munsif, Kumbakonam made in E.P.No.50 of 2013 in O.S.No.606 of 1986.

For Petitioners : Mr.B.Anandan, Advocate

For Respondents No.1 to 5 : M/S.H.Lakshmi Shankar, Advocate

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 1646 days in filing the Civil Revision Petition against the fair and decreetal order, dated 08/01/2019 passed in EP No.50 of 2013 in OS No.606 of 1986, by the Principal District Munsif, Kumbakonam.

2.The facts in brief:-

A suit in OS No.606 1986 was filed for declaration, permanent injunction, recovery of possession and for costs. The Judgment Debtor was directed to pay money to the Decree Holder within two months. That judgment was passed, on 28/04/1992. Against which, appeal was preferred by the Judgment Debtor. That came to be dismissed in AS No.20 of 1992 on the file of the Sub Court, Kumbakonam, by judgment, dated 24/06/1993. Second Appeal was preferred in SA No.1445 of 1995. That was also came to be dismissed by this court, dated 04/03/2008.



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3.Later EP No.50 of 2013 was preferred by the legal heirs of the Decree Holder.

It was also allowed directing the Judgment Debtor to deliver the possession. Against which, CMA No.4 of 2019 was preferred by the defendants 1, 2, 4 and 5. The defendants 1 and 2 died after the suit and the defendants 4 and 5 were on records. It was filed in the year 2019. Challenging the order passed by the Executing Court on many grounds, CMA was pending for a very long time and finally, it was dismissed, on 24/07/2023 observing that against the order passed in the execution proceedings under Order XX1, Rule 35 of the Civil Procedure code, appeal is not maintainable. But, of course liberty was granted to the petitioners to challenge the same in the manner known to law with the following observation:-

"Though the appellant inadvertently filed this Appeal, this court also numbered the same without verification by oversight. Therefore by following the rule that court can do no wrong, this court gives liberty to the Appellant to file proper application before proper forum with limitation exemption as provided in section 14 of the Limitation Act, 1963."

4.Invoking the above said liberty, this revision is preferred with a delay of 1646 days in filing the revision.



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5.Heard both sides.

6.The learned counsel appearing for the petitioners would submit that since, they *bona-fidely* prosecuting the matter in CMA No.4 of 2019 before the Appellate Court, section 14 of the Limitation Act will come to their aid. It has been also observed by the appellate court.

7.Section 14 of the Limitation Act reads as under:-

“14.Exclusion of time of proceeding bona fide in court without jurisdiction –

(1)In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2)In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a



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court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3)Notwithstanding anything contained in rule 2 of Order XXXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."

8.The learned counsel appearing for the respondents would submit that it is not a *bona-fide* proceedings, the petitioners ought to have known that CMA will not lie in normal circumstances before the order passed in the execution proceedings. He would also draw the attention of this court to the order of revision, original suit appeal proceedings, second appeal proceedings, etc.

9.He would further submit that the revision petitioners are dragging on the matter. Now this sort of objection can only be canvassed at the time of hearing of the main CRP.



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10. Now there is a finding by the Appellate Court that the petitioners are *bona-fidely* prosecuting the matter, automatically the time spent, unless the above said proceedings is wanton or *mala fide* can be excluded.

11. On that account, this Civil Miscellaneous Petition is allowed, of course on payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the respondents on or before 20/03/2024.

12. For reporting compliance, call on **22/03/2024**.

sd/-
18/03/2024

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/03/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

TO

THE PRINCIPAL DISTRICT MUNSIF
KUMBAKONAM.



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THE SECTION OFFICER,
JUDICIAL(POSTING) SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.B.ANANDAN, Advocate (SR-2689[I] dated 04/03/2024)

ORDER
IN
CMP(MD)No.14619 of 2023
in
CRP(MD)SR No.76468 of 2023
Date :18/03/2024

SS/JGB/SAR- /21/03/2024/7P/4C

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