



CMP(MD) No.3817 of 2024 in
S.A.(MD)SR No.96463 of 2023

WEB CO BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2024

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THE HON'BLE MR.JUSTICE B.PUGALENDHI

CMP(MD)No.3817 of 2024
in
SA(MD)SR.No.96463 of 2023
and
SA(MD)SR.No.96463 of 2023

L.S.Shantharam ... Petitioner/Appellant/defendant

Vs

L.S.Ramamoorthy ... Respondent / Respondent / Plaintiff

PRAYER in CMP(MD)No.3817 of 2024: Civil Miscellaneous
Petition filed under Order 41 Rule 3(A) 1 of Civil Procedure Code to
condone the delay of 4385 days in preferring the second appeal.

PRAYER in SA(MD)SR.No.96463 of 2023: Second Appeal filed
under Section 100 of the Civil Procedure Code, to set aside the
judgment and decree, dated 29.09.2009, passed in AS.No.22 of
2008, on the file of the Principal District Judge, Ramanathapuram,
confirming the judgment and decree, dated 21.02.2008, passed in



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OS.No.264 of 2001 on the file of the Subordinate Court,
Paramakudi.

For Petitioners : Ms.A.P.Yazhini
For Respondent : Mr.M.S.Jeyakarthick

ORDER

This CMP(MD)No.3817 of 2024 has been filed to condone the delay of 4385 days in preferring the second appeal.

2.The defendant in OS.No.264 of 2001 has filed this appeal as against the judgment and decree dated 29.09.2009, passed in AS.No.22 of 2008, by the Principal District Court, Ramanathapuram, confirming the judgment and decree, dated 21.02.2008, passed in OS.No.264 of 2001 by the Subordinate Court, Paramakudi, with a delay of 4385 days.

3.The petitioner has filed an affidavit along with this civil miscellaneous petition stating the reason for the delay that he has



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suffered a financial loss and one of his sons sustained head injury and therefore, he was not in a position to file the appeal in time. The petitioner has further stated that pending the appeal suit, due to his financial condition he has approached the legal aid services authority and an advocate by name Arputha Raj was appointed by the legal aid services authority for prosecuting the appeal suit. By referring to this appointment of legal aid advocate, the learned Counsel for the petitioner submits that the petitioner was not having financial capacity to prosecute the appeal suit and therefore, he sought the assistance of legal aid services authority.

4.The learned Counsel for the respondent filed a counter affidavit stating that the plaintiff and the defendant are brothers. The plaintiff was in occupation of the property of the defendant for several years. A sale agreement was also entered into between them on 28.06.1998 for a portion of the property. The petitioner / defendant is in occupation of the remaining portion of the property.



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Though the defendant executed a sale agreement, he did not come forward to execute the sale agreement by receiving a sum of Rs.15,000/- towards consideration. Therefore, a suit was filed in OS.No.264 of 2001 for the relief of specific performance. The suit was decreed on 21.02.2008. As against the same, the petitioner filed an appeal before the Principal District Court, Ramanathapuram in AS.No.22 of 2008. In this case he sought for the assistance of the legal aid services authority. The legal aid services appointed a counsel by name Mr.Arputha Raj to prosecute the appeal on his behalf. However according to the learned Counsel for the plaintiff/respondent, the petitioner later changed the counsel and engaged a private counsel by name Mr.P.Venkatesan and conducted the appeal suit and lost the appeal. Thereafter he did not follow up the case, since he is not having a good case.

5.He further submits that after the judgment and decree passed by the trial Court and the appellate Court, the plaintiff filed an



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execution petition before the Sub Court, Paramakudi in EP.No.20 of 2010 on 23.06.2010 and it was allowed. The Sub Court executed a sale deed vide document No.6500 of 2010, in favour of the plaintiff on 13.12.2010.

6.According to the plaintiff he settled this property in favour of his wife by way of a settlement deed vide No.2877 of 2011 dated 17.06.2011. The learned Counsel claims that all the revenue records were mutated in favour of his wife and patta was issued on 18.06.2013. After a period of 15 years from the date of judgment of the appellate Court, this second appeal is filed with a delay of 4835 days without any valid reason and therefore this civil miscellaneous petition is liable to be dismissed.

7.The learned Counsel also pointed out that the main ground taken up by the petitioner is that the petitioner's 2nd son who is said



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8.This Court considered the rival submissions made and perused the materials placed on record.

9.This second appeal is filed by the defendant as against the concurrent findings of the Courts below. The suit was filed for specific performance and the dispute is between the brothers. The petitioner has taken two grounds for the huge delay of 4835 days in filing this appeal that he was facing financial loss and his son had sustained head injury.

10. With regard to the first ground the petitioner has projected that due to his financial condition, he prosecuted the first appeal with the advocate one Mr.Aruputharaj, appointed by the legal aid services authority. Now on the advice of his son he collected the



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WEB COPY papers from the said advocate and filed this second appeal. However, the fact remains that the first appeal was prosecuted by this petitioner through one Advocate Mr.Venkatesan.

11. With regard to the second ground that his son sustained head injury, the petitioner has not placed any material in support of this contention. Therefore, this Court is of the view that the petitioner has not satisfactorily explained the reasons for the inordinate delay of 4385 days in filing this second appeal. Further the execution petition was filed as early as in the year 2010, sale deed was executed in favour of the plaintiff in the year 2011 and he subsequently had also alienated the property in the year 2013. Therefore, no purpose would be achieved by entertaining this second appeal.

12.This Court is not satisfied with reasons for the inordinate delay in filing the second appeal. Therefore, this civil miscellaneous



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petition is dismissed and the second appeal is dismissed at the SR
stage itself.

18.10.2024

DSK

To

1.Principal District Judge,
Ramanathapuram.

2.The Sub Judge,
Paramakudi.



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