



CMP(MD) No.17669 of 2023

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

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

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CMP(MD) No.17669 of 2023

IN

SA(MD) No.730 of 2009

K.SINGARAVELU

... Petitioner / Appellant

Vs

1 KALAISELVI

REPRESENTED BY HER FATHER AND NEXT FRIEND,

L.SATHYANATHAN (DIED),

S.NIRMALA,

D/O. LATE.L.SATHYANATHAN

... 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 631 days in filing restoration petition in S.A.(MD).No.730 of 2009, which was dismissed for default on 25-01-2022.

Prayer in SA(MD) No.730 of 2009:

To set aside the decree and judgment passed in A.S.No.49 of 2007 on the file of Principal District Court, Thanjavur dated 28.02.2008 confirming the decree and judgment passed in O.S.No.149 of 2004 on the file of District Munsif Court,



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Thanjavur dated 14.06.2006.

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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.M.R.S.PRABHU, Advocate for the petitioner and of Mr.N.TAMILMANI, Advocate on behalf of the Respondent, the court made the following order:-

Reserved on : 13.02.2024

Pronounced on : 27.02.2024

This Civil Miscellaneous Petition is filed to condone the delay of 631 days in filing restoration petition in S.A(MD)No.730 of 2009, which was dismissed for default on 25.01.2022.

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

The petitioner is the appellant in the main appeal. The appeal was posted finally on 21.01.2024. The letter written by his counsel about the posting of the case in the list has not reached the petitioner and so he did not know about the posting of the appeal in the list. The learned counsel for the appellant reported "no instructions" on 21.01.2022 and hence the appeal was adjourned to 25.01.2022 and the name of the petitioner was printed in the list. The petitioner has not received



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any notice from this Court and hence the appeal was "dismissed for default" on 25.01.2022. The petitioner came to know about the dismissal of the appeal from receipt of notice in E.P.No.66 of 2023 in O.S.No.149 of 2004 and immediately contacted his counsel. The petitioner is a senior citizen and he is continuously taking treatment for his ailments. The petitioner is not negligent for conducting the appeal. There is a delay of 631 days in filing the petition for restoration of appeal. The petitioner has fair chance of success in this Second Appeal and he is ready to contest the case.

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

The petitioner has filed this petition only with intention to drag on the execution petition. The averment that the letter written by his counsel was not reached the petitioner is false. The Second Appeal was filed in the year 2009. The petitioner has stated that he received the notice in E.P.No.66 of 2023 in O.S.No.149 of 2004 for hearing on 04.01.2024 and then only he contacted his counsel. The respondent is the wife of the petitioner and their marriage was dissolved, she filed a main suit for recovery of house hold articles including jewels weighing 160.650 grams belonged to her. The said suit was decreed and the first appeal was also dismissed confirming the decree of the trial Court. Against the concurrent findings,



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the present Second Appeal was filed in the year 2009. After struggling for 20 years still the petitioner intends to drag on the proceedings. The petitioner has not taken interest to conduct the Second Appeal. Hence, the petition has no valid reason and the same is liable to be dismissed.

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

5. The learned counsel for the petitioner has submitted that because of non reaching of communication, the Second Appeal was "dismissed for default" as the petitioner's counsel reported "no instructions". The petitioner states that he has valid contentions in the Second Appeal. On perusal of records, it is admitted that the petitioner and the respondent were spouses and their marriage was dissolved. After dissolving of marriage, the respondent filed the main suit for recovery of jewels, which was decreed and the decree was confirmed by the First Appellate Court.

6. Admittedly, against the concurrent findings of the Courts below, the Second Appeal was numbered considering the grounds raised in the appeal memorandum. Therefore, the petitioner prays that he may be given a chance to conduct the Second Appeal. On perusal of counter affidavit, the respondent has mainly contested that the petitioner has known about the stage of the case and



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allowed for "dismissed for default" only with intention to drag on the proceedings to prevent the respondent from enjoying the fruits of the decree. Further, the learned counsel for the petitioner submits that he is ready to argue the Second Appeal and also ready to pay cost for inconvenience caused by filing this delay condonation petition.

7. The main argument of the petitioner is that the respondent is struggling for 20 years for recovery of jewels. However, during the course of arguments, the learned counsel for the respondent stated that "leave it to Court" and ready for arguments in the main appeal. It is a settled principle that because of delay, the litigant should not be suffered in adjudication and the appeal has to be disposed on merits. Therefore, this Court is of the opinion that the petitioner has to be given an opportunity to contest the Second 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 condition to meet out the inconvenience caused to the respondent.

8. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay a cost of Rs.5,000/- (Rupees Five Thousand only) to the respondent on or before 13.03.2024, failing which this petition stands dismissed automatically without any further reference to this Court.



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9. On such payment being made within the stipulated time, the Registry is directed

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to restore the Second Appeal and list the same on 20.03.2024.

sd/-

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/03/2024

Sub-Assistant Registrar

(C.S. I / II / III /IV)

Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

To

1.The Principal District Judge,
Thanjavur.

2.The District Munsif,
Thanjavur.

ORDER

IN

CMP(MD) No.17669 of 2023

IN

SA(MD) No.730 of 2009

Date :27/02/2024

ED/ GS /SAR- (04/03/2024) 6P / 3C

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