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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.09.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE B.PUGALENDHI**

C.M.P.Nos.15514 and 15515 of 1998

in

S.A.SR Nos.51476 and 51482 of 1996

For C.M.P.No.15514 of 1998

P.Hayathkhan

... Petitioner

Vs

1. Raja Mohammed

2.Shajahan

3.Jalaudeen

... Respondents

PRAYER in C.M.P.No.15514 of 1998: Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act to condone the delay of 589 days in filing the above second appeal S.A SR No.51476 of 1996.

PRAYER in S.A.SR No.51476 of 1996: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the decree and



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judgment, passed in A.S.No.155 of 1991 on the file of the District Court, Thanjavur, dated 05.08.1993, confirming the decree and judgment, passed in O.S.No.59 of 1987 on the file of the Sub Court, Thanjavur, dated 11.11.1991.

For Petitioner : Mr.V.K.Vijayaragavan

For Respondents : Mr.B.Ponnupandi

For C.M.P.No.15515 of 1998

P.Hayathkhan

... Petitioner

Vs

1. Raja Mohammed

2. Shajahan

3. Jalaudeen

... Respondents

PRAYER in C.M.P.No.15515 of 1998: Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act to condone the delay of 589 days in filing the above second appeal in S.A SR No.51482 of 1996.

PRAYER in S.A.SR No.51482 of 1996: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment, passed in A.S.No.156 of 1991 on the file of the District Court, Thanjavur, dated 05.08.1993, confirming the decree and judgment,



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passed in O.S.No.192 of 1989 on the file of the Sub Court, Thanjavur, dated 11.11.1991.

For Petitioner : Mr.V.K.Vijayaragavan

For Respondents : Mr.B.Ponnandi

COMMON ORDER

These civil miscellaneous petitions are filed in the year 1998 seeking to condone the delay of 589 days in filing the second appeals in S.A.SR.Nos.51476 and 51482 of 1996.

2.The second appeals are arising out of the judgment and decree passed in A.S.Nos.155 and 156 of 1991 by the District Court, Thanjavur, respectively. The appellant has filed a suit in O.S.No.192 of 1989, before the Sub Court, Thanjavur, against the respondents 1 and 2 seeking a relief of permanent injunction. The respondents 1 and 2 have also filed another suit in O.S.No.59 of 1987 before the Sub Court, Thanjavur, for



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declaration of the title and for injunction. Both the suits were tried together and the suit filed by the petitioner in O.S.No.192 of 1989 was decreed and the suit filed by the respondents 1 and 2 in O.S.No.59 of 1987 was dismissed. As against the same, the respondents 1 and 2 have preferred the appeals in A.S.Nos.155 and 156 of 1991 as against the judgment and decree passed in O.S.Nos.192 of 1989 and 59 of 1987 respectively. Both the appeal suits were dismissed by the District Court Thanjavur on 11.11.1991. However, the present second appeals were filed with a delay of 589 days.

3.The petitioner in his applications had stated that he is suffering from mental illness and recurrent depression, for which, he is taking treatment for some time and therefore, he cannot file the second appeals in time and follow up the cases.

4.Though this Court is inclined to accept the reasons, there is no



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representation for the petitioner,

5. Earlier, when the cases were taken up for hearing, the learned Counsel for the petitioner has filed a memo stating that the case bundles along with vakalats were already sent to the petitioner by Registered Post.

6. Considering the memo filed by the learned Counsel for the petitioner, this Court has already directed the learned Counsel for the petitioner to send a communication to the petitioner about the listing of these applications. Accordingly, the learned Counsel for the petitioner has also taken a notice to the petitioner on 16.08.2024. The copy of the letter and the acknowledgment is also placed before this Court. For the letter sent by the learned Counsel for the petitioner, the father of the petitioner has sent a reply letter to the learned Counsel for the petitioner that the petitioner is in abroad and requested to take adjournment by



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three months.

7.It appears that the petitioner has been duly intimated about the listing of these cases. However, there is no representation for the petitioner.

8.The learned Counsel for the respondents submits that the respondents 2 and 3 died and he cannot get any instructions from the respondents 2 and 3. When the respondents 2 and 3 died, the petitioner has failed to take any steps to implead the legal heirs of the respondents 2 and 3. It is not known whether the petitioner would take steps for impleading the legal heirs of the respondents 2 and 3.

9.Since the petitioner has not shown any interest to prosecute these applications, no purpose would be served keeping the application pending. Therefore, these civil miscellaneous petitions are dismissed for



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non-prosecution. No costs. Consequently the second appeals are rejected at the SR stage itself.

10.Registry shall keep the letter sent by the petitioner's father on record.

06.09.2024

Internet :Yes
Index :Yes/No
NCC :Yes/No

LR

TO:

1.The District Court,
Thanjavur.

2.The Sub Court,
Thanjavur.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,



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Madurai.



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B.PUGALENDHI, J.

LR

C.M.P.Nos.15514 and 15515 of
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Dated:
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