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CMP.No.2660 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CMP.No.2660 of 2024
in AS.SRNo.134715 of 2023

A.Kathiravan

Petitioner(s)

Vs

S.Saravanababhu

Respondent(s)

Prayer in CMP.No.2660 of 2024: Petition filed under Order 41 Rule 3A of CPC read with Section 5 of the Limitation Act seeking to condone the delay of 1330 days in filing the above appeal.

Prayer in Appeal Suit: Appeal filed under Section 96 of Code of Civil Procedure to set aside the judgment and decree dated 22.02.2019 in O.S.No.258 of 2015 on the file of the learned I Additional District Court, Salem.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.N.Suresh

ORDER

This petition has been filed seeking to condone the delay of 1330 days in filing the above appeal.

2. The only contention raised by the learned counsel for the petitioner is that for filing appeal, he is the only breadwinner to his family. In view of his



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financial crisis and health issue, he was unable to file appeal in time. Hence, filed the above appeal with a delay of 1330 days and seeks for condoning delay in filing the appeal.

3. Counter has been filed by the respondent disputing the contentions of the learned counsel for the petitioner that the reasons assigned by the petitioner are sham and nominal. Hence, seeks for dismissal of the petition.

4. Of course, the expression“sufficient cause” should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. Casually filing the petition to condone the delay in filing without any proper reasons, such huge delay cannot be condoned. A Court granting indulgence must be satisfied that there was deligence on the part of the appellant and that he was not guilty of any negligence whatsoever. Where there is no sufficient cause for condoning the delay, the said delay should not be condoned as it amounts to a case of discretion not being exercised judicially.



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5. The only contention of the learned counsel for the petitioner/appellant is the petitioner is the only breadwinner to his family. In view of his financial crisis and health issue, he was unable to file appeal in time. This Court is of the view that since the petitioner claims that he was under financial crisis for more than 4 years, he ought to have filed an appeal as an indigent person as per Order XLIV of Code of Civil Procedure. Mere lack of monetary capability will not preclude a person from knocking at the doors of the Court to vindicate his rights. However, the petitioner/appellant has not taken any steps to file the appeal as an indigent person. These facts indicate the callous attitude of the petitioner/appellant and that cannot be brushed aside altogether. Hence, I do not find any merits to condone such huge delay in filing the appeal.

6. Accordingly, this petition stands dismissed and un-numbered appeal suit stands rejected. No costs.

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Index : Yes/No
Internet : Yes/No
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N.SATHISH KUMAR, J.

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