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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Thursday, the Twentieth day of March Two Thousand and Twenty Five

PRESENT

The HONOURABLE MR. JUSTICE P.B. BALAJI

CMP(MD). No.4403 of 2021

in

SA(MD)No.591 of 2005

1. A.Karuppayee (Died)

2. Chandran

3. Veerapandi

4. Vijaya

... Petitioners/ Appellants

Vs

K.Sivakumar

On Behalf of S. Surendran as Power of
Attorney S/o. Karuppiah

... Respondent/ Respondent

Prayer in CMP(MD). No.4403 of 2021

This Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to Condone the delay of 901 days in filing the petition to restore the second appeal in S.A.(MD).No.591 of 2005 and thus render justice.

PRAYER in SA(MD)No.591 of 2005:

This Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 11.04.2005 in A.S.No.263 of 2004, on the file of the I Additional Subordinate Court, Madurai ,reversing the judgment and decree dated 30.12.2002 in O.S.No.211 of 2001, on the file of the District Munsif, Melur.



ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.Prabu, Advocate for Mr.C.Bethanasamy, Advocate for the Petitioner this Court made the following order:

I have heard the learned Counsel for the parties in S.A.[MD]No.591 of 2005, seeking to condone the delay of 901 days in filing the petition to restore the second appeal which was dismissed for default on 03.10.2018.

2.I have gone through the affidavit filed in support of this petition and I have also heard the learned Counsel for the petitioner as well as the contesting respondent.

3.The case of the learned Counsel for the petitioner is that the Counsel who was attending the second appeal did not follow up the matter because of his ailment and he allowed the second appeal to be dismissed for default. It is seen from the affidavit that the second appeal was dismissed for default on 03.10.2018. Even according to the petitioner, the Counsel came to know about the dismissal as early as on 26.10.2018. There is no whisper about whether the Counsel took steps to inform the petitioner about the dismissal of the second appeal. Even otherwise, as a diligent litigant, the petitioner ought to have followed up the matter with the counsel. Admittedly, the petitioner has not taken any such steps and come to this Court stating that he came to know about the dismissal of the Second Appeal only when he contacted his counsel after suffering an order in transfer of patta proceedings in September, 2020. Even thereafter, the petitioner has slept over the



matter and has chosen to file Section 5 Petition only in April, 2021. Therefore, the petitioner has not satisfactorily explained the delay and is not entitled to condonation.

4. Accordingly, this Civil Miscellaneous Petition stands dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2025

Sub Assistant Registrar
(CS - I/II/III/IV)

Madurai Bench of Madras High Court,
Madurai.

TO

1. The I Additional Subordinate Judge,
Madurai.

2. The District Munsif,
Melur.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai

+ 1 cc to Mr. Mr.C.Bethanasamy Advocate CA SR.NO.19182/2025

+ 1 cc to Mr. Mr.T.Palanisamy Advocate CA SR.NO.18533/2025



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ORDER DATED : 20/03/2025

ORDER

CMP(MD). No.4403 of 2021
in
SA(MD)No.591 of 2005
Giving direction and etc.
as stated within.

RS (29/04/2025) 4P/ 6C

Madurai Bench of Madras High Court is issuing
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