



*C.M.P.(MD)No.12548 of 2023
in A.S(MD)No.SR 59817 of 2019*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.12.2024

Delivered on : 24.01.2025

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No. 12548 of 2023

in

A.S(MD)No.SR 59817 of 2019

Jaheer Hussain

: Petitioner

Vs.

1.Muthulakshmi

2.Rathinam

3.Dakshinamoorthy

: Respondents

PRAYER in C.M.P(MD)No. 6755 of 2023: Civil Miscellaneous Petition filed under Order 4 Rule 9(4) of AS Rules, to condone the delay of 1452 days in representing the appeal A.S(MD)SR.No.59817 of 2019.

PRAYER in A.S(MD)No.SR 59817 of 2019 : Appeal Suit is filed under Section 96 of C.P.C., to set aside the judgment and decree, dated 14.03.2017 made in O.S.No.156 of 2011 on the file of the Principal District Court, Madurai.



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For Petitioner : Mr.R.G.Shankar Ganesh
For Respondents : Mr.H.Lakshmi Shankar, for R2.
: No Appearance, for R3.
: R1 died.

ORDER

The above application has been filed seeking orders to condone the delay of 1452 days in representing the appeal papers in A.S(MD)SR.No.59817 of 2019.

2. The petitioner has filed the above appeal challenging the judgment and decree passed in O.S.No.156 of 2011, dated 14.03.2017 on the file of the Principal District Court, Madurai along with petition to condone the delay of 695 days in filing the appeal and the petition to condone the delay of 1464 days in payment of deficit Court fee to the appeal, that the appeal came to be filed on 19.08.2019 and that since the appeal papers came to be returned for rectification of some defects by the Registry on 23.08.2019, that the above petition came to be filed to condone the delay of 1452 days in representing the appeal papers.



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3.The petitioner in the affidavit filed in support of the above petition has stated that the appeal papers were returned on 23.08.2019 for rectifying certain defects; that after the papers were returned, his counsel has shifted his office and hence, the papers has been mixed up with other bundles; that the papers, which were returned, were traced out in the said office recently, that there is a delay of 1452 days in representing the papers and that the petitioner will be put to irreparable loss and hardship, if the delay is not condoned.

4.The second respondent has filed a counter statement raising serious objections wherein, it has been stated that the judgment and decree was passed on 14.03.2017; that the petitioner's incarceration and lodgement in the jail has no relevance for filling a copy application for getting the certified copy of the judgment and decree as his presence is not at all required to apply for copies and as such, the reason that there was a delay of 1 ½ years cannot be acceptable; that the respondent came to know that the appeal papers were presented very formally and in an ineffective manner on 19.08.2019 and thereafter, in the year 2021 the condone delay affidavit is shown to be sworn that the appeal papers itself has been



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represented in the year 2023 after further delay of four years; that the very presentation in 2019 with the delay of 695 days is not proper presentation at all; that the delay is from 2017 to 2023; that the conduct of the petitioner and the manner in which, the appeal was presented with delay and again kept in cold storage and represented after four years would clearly show that the petitioner is not at all be diligent; that the petitioner had also filed another petition for deficit Court fee as he presented the appeal with Court fee of Rs.200/- against the actual Court fee of Rs.30,151/- and the petitioner has not assigned any reason for the same; that the respondent after four years from the date of decree, sold the suit property in favour of one K.T.N.Vallarasu, vide sale deed, dated 11.06.2021, who in turn subsequently, executed a memorandum of deposit of title deeds in favour of “The Adithiya Birla Housing Limited” by obtaining a loan and that therefore, the right has accrued in favour of the third party; that the petitioner is a history sheeter and so many cases are pending against him; that the petitioner has represented the appeal suppressing all the material facts with huge delay of 6 years and only to hold the respondent; that since third party's rights have been created in the property, the petitioner is not entitled to get the delay condoned; that the purchaser, who is in possession



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of suit property is a necessary party as his rights cannot be jeopardized behind his back and that the above petition is liable to be dismissed.

5. It is evident from the records that the respondents 1 and 2 have filed the suit in O.S.No.156 of 2011 to declare that the sale deeds, dated 25.04.2007 purported to have been executed by the first plaintiff in favour of the first defendant in respect of the western portion of the 'A' schedule property and the sale deed, dated 27.07.2007 purported to have been executed by the first plaintiff in favour of first defendant in respect of eastern portion of the 'A' schedule property be set aside and cancelled and for consequential permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the suit 'A' schedule property by the plaintiffs either by physical intervention or in any other manner whatsoever and for permanent injunction restraining the defendants from creating any documents with regard to the suit 'A' schedule property and that after full trial, the learned Principal District Judge, Madurai has passed the impugned judgment and decree, dated 14.03.2017 granting the reliefs sought for. Aggrieved by the said judgment and decree, the first defendant has preferred the above



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appeal along with application to condone the delay of 695 days in preferring the above and another petition to condone the delay of 1464 days in payment of deficit Court fee to the appeal.

6. It is pertinent to note that though the impugned judgment and decree came to be passed on 14.03.2017, even according to the petitioner, he applied and obtained the certified copies of the judgment and decree on 23.07.2019, after the lapse of more than two years, since the date of judgment and that he filed the appeal with the delay of 695 days.

7. As already pointed out, the appeal which came to be filed on 19.08.2019 was returned by the Registry for rectification of some defects, but the petitioner has represented the appeal papers only on 23.08.2023, after the lapse of nearly four years, since the return of appeal papers. The only reason canvassed for the delay is that his counsel had shifted his office and at that time, the returned appeal papers had been mixed up with the other case bundle and they were able to trace out the papers recently and hence, there occurred a delay of 1452 days.



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8.As rightly pointed out by the learned counsel for the respondent, the petitioner/appellant has filed an affidavit in support of the above petition. Except the above bald allegation that the appeal papers got mixed up with the other bundles, he has not elaborated anything further. As rightly contended by the learned counsel for the respondents, the petitioner has not even chosen to file an affidavit of any person attached with his counsel office to show that the office was shifted and the appeal papers got mingled with other bundles and that they were traced out in the year 2023.

9.As rightly pointed out by the learned counsel for the respondent, the petitioner has affixed Court fee at Rs.200/- out of Rs.30,151/- and filed an application to condone the delay in paying the deficit Court fee. No doubt, as rightly contended by the learned counsel for the petitioner, this Court has to see as to whether sufficient cause was shown for delay in representing the appeal papers and not with regard to the delay in filing the main appeal.



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10. Considering the way in which, copy application was filed and the date on which, the appeal came to be filed with delay, the way in which meagre Court fee was paid in the appeal and the delay in which, the appeal papers were re-submitted, this Court can easily infer that the petitioner was not at all diligent, since the beginning and was using the process of Court casually, mechanically and very leisurely and more importantly with huge amount of delay.

11. The learned counsel for the second respondent would submit that the petitioner, after four years since the date of judgment, sold the suit property in favour of one K.T.N.Vallarasu, vide sale deed, dated 11.06.2021 and since then the purchaser has been in possession and enjoyment of the property and that the purchaser subsequently obtained a loan for which, he has executed a memo of deposit of title deeds in favour of his creditor Adithya Birla Housing Limited and that therefore, since a right has accrued in favour of third party, the petitioner is not entitled to get the delay condoned.

12. As rightly contended by the learned counsel for the respondent, the petitioner has miserably failed to plead and prove the



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reason or explanation for the inordinate delay of 1452 days in representing the papers.

13. Considering the entire facts and circumstances of the case and taking note of the delay occurred at every stage, this Court has no hesitation to hold that the petitioner is guilty of delay and laches and as such, the petitioner is not entitled to get the relief claimed. Consequently, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

14. In the result, the Civil Miscellaneous Petition is dismissed and the appeal suit in A.S(MD)No.SR 59817 of 2019, is rejected at the SR stage itself.

24.01.2025

NCC : Yes /No
Index : Yes / No
Internet : Yes / No
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K.MURALI SHANKAR,J.

das

To

- 1.The Principal District Court, Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
C.M.P.(MD)No. 12548 of 2023
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Dated: 24.01.2025