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C.M.P(MD)No.15780 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.10.2025

Pronounced on : 04.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.15780 of 2025

in

A.S.(MD)SR.No.69638 of 2025

G.K.Gubendran
S/o.Kaleeshwaran Pillai

... Petitioner/Appellant

Vs.

A.Valanarasu
S/o.M.Alexander

... Respondent/Respondent

PRAYER : Civil Miscellaneous Petition is filed under Order 41 Rule 3(A) of CPC., to condone the delay of 308 days is preferring the First Appeal against the decree and judgement, dated 16.02.2024 passed in O.S.No.169 of 2019 on the file of the Principal District Judge, Karur.

For Petitioner : Mr.V.Mariselvaraj

For Respondent : Mr.A.Mohamedhaneef



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ORDER

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

The respondent has filed the main suit in O.S.No.169 of 2019 before the Principal District Court, Karur, for the relief of specific performance against the petitioner. The respondent pleaded that the petitioner agreed to sell his property for a sale consideration of Rs.13,00,000/-, out of which, the respondent paid Rs.12,00,000/-. The petitioner contested the suit that the petitioner never received any amount. Though the trial Court negatived the relief of specific performance, the trial Court decreed the suit, directing the petitioner to pay the advance amount of Rs.12,00,000/- with interest in the absence of an alternative prayer by the respondent. The trial Court passed the judgment on 16.02.2024. The petitioner requested his counsel to hand over the certified copies as soon as the receipt of the same. The petitioner's counsel collected the certified



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copies, which were made ready on 18.07.2024, but he did not hand over to the petitioner. In the month of December 2024, the petitioner received the certified copies of the judgment and decree from his counsel. Due to inadvertence, the petitioner's counsel did not file copy application for printed copy. It was filed on 08.08.2025. So, there is a delay of 308 days in filing the appeal. In the meantime, the respondent filed an execution petition in E.P.No.40 of 2025 and the same is pending for filing a counter. The petitioner has a fair chance of success. Hence, the delay of 308 days in preferring the First Appeal may be condoned.

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

The petitioner has filed this petition with the intention to obstruct the execution proceedings filed by the respondent. The respondent filed the suit for specific performance, however, the trial Court decreed and directed the petitioner to repay the advance amount with interest by its judgment on 16.02.2024. To execute the decree, the respondent filed the execution proceedings in E.P.No.40 of 2025 in O.S.No.169 of 2019. The petitioner entered into appearance through counsel on 06.06.2025. Thereafter, the petitioner has filed the appeal on 13.08.2025 with this delay condonation



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petition. The petitioner has not properly explained the delay of 308 days, the alleged averments in the petition are denied as false. Only to drag the execution proceedings, the petitioner has filed this petition, hence, the petition may be dismissed.

4. Heard both sides and perused the material records. It is clear that the respondent filed the main suit for specific performance against the petitioner upon the sale agreement. The Trial Court decreed the suit, granting alternative relief directing the petitioner to pay the advance amount with interest. The petitioner's counsel argued that there is no prayer for alternative relief in the main suit, but the trial Court decreed to return the amount and the Court suo motu cannot grant the alternative relief without prayer as per Section 22 of the Specific Relief Act. However, this argument need not be discussed in this petition, which is filed for condonation of delay.

5. The petitioner traced the reason for the delay that his counsel has belatedly handed over the certified copies of the judgment and decree. The respondent's counsel submitted that the respondent filed an execution petition for executing the decree, the petitioner has entered an appearance through counsel and has appeared for several hearings, and lastly, he was set



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ex-parte as the counter was not filed. The respondent specifically contended that the petitioner has filed this petition with the intention of dragging the execution proceedings. The petitioner has preferred a first appeal against the judgment of the trial court. On hearing both and on perusal of the affidavit, the petitioner stated that the trial Court passed judgment on 16.02.2024, he filed the copy application for obtaining certified copies of judgment and decree on 21.02.2024. It shows that the petitioner has the intention to prefer the appeal. He further stated that due to inadvertence, his counsel has not applied for printed copy. Later, he filed a copy application vide receipt No.1081253, dated 08.08.2025.

6. It is settled law that because of mistake or error in following the case of the litigant by the advocate, the right of appeal of the litigant cannot be deprived and that each and every chance has to be given to the party to put forth his/her case before the appellate Forum. Further, it is a settled principle that every litigant has the right to prefer appeal and also the right of appeal should not be defeated by mere delay alone. On giving an opportunity of hearing the petitioner in the first appeal, the respondent will not be prejudiced. Further, the respondent has also filed the caveat petition, expecting the petitioner would file an appeal. Therefore, this Court is of the



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opinion that the petitioner has to be given an opportunity to prefer the first 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 conditions to meet out the inconvenience caused to the respondent.

7. 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 18.11.2025, failing which this petition shall stand automatically dismissed.

04.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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