



C.M.P(MD)No.13865 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.P(MD)No.13865 of 2024

in

C.M.A(MD)No.844 of 2012

and

M.P(MD)No.1 of 2012

Chinnarasu

...Petitioner/ Appellant

-Vs-

1.Palanivel Nattar

2.Gunasekaran

...Respondents/
Respondents

PRAYER in C.M.P(MD)No.13865 of 2024: Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 2390 days in filing the restoration petition to restore the C.M.A(MD)No.844 of 2012 filed before this Court, which was dismissed for default on 09.02.2018.



C.M.P(MD)No.13865 of 2024

Prayer in C.M.P(MD)No.71338 of 2024: This Civil Miscellaneous Petition is filed under Order 41 Rule 19 of C.P.C., to restore the C.M.A(MD)No.844 of 2012 before this Court, which was dismissed for default on 09.02.2018.

For Petitioner : Mr.G.Karnan
For R2 : Mr.V.Chandrasekar
For R1 : Died

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 2390 days in filing the petition to restore the C.M.A(MD)No.844 of 2012, which was dismissed for default on 09.02.2018.

2.Heard the learned counsel for the petitioner and the learned counsel for the second respondent.

3.The respondents, who are the plaintiffs have filed a suit in O.S.No.74 of 2004 before the District Munsif Court, Thiruvaiyaru, for the relief of declaration and recovery of possession. After completion of trial, the trial Court has dismissed the suit by judgment dated 12.11.2010. Challenging the said judgment, the respondents have filed an appeal suit in



C.M.P(MD)No.13865 of 2024

A.S.No.22 of 2011 before the Additional Subordinate Court, Thanjavur.

Further, it has been stated that after service of notice and after hearing the arguments of both sides, the lower appellate Court allowed the said appeal on 07.12.2011 by setting aside the judgment passed in O.S.No.74 of 2004 and remanded back to the trial Court for fresh trial. Aggrieved over the same, the petitioner herein filed an appeal before this Court in C.M.A(MD)No.844 of 2012 and the same was admitted and notice was ordered to the respondents. Pursuant to which, the respondents also entered appearance through counsel and the matter was posted for final hearing on 09.02.2018. The said C.M.A was dismissed for default because of the non-appearance of the appellant.

4.According to the petitioner, the said appeal is pending from the year 2012 onwards and he enquired about the stage of the appeal. Due to COVID, the counsel, who filed the appeal, was not in a position to attend the Court proceedings. Therefore, the petitioner came to Madurai on 18.08.2024 and contacted his counsel. Then only, he came to know that the



C.M.P(MD)No.13865 of 2024

appeal was dismissed for default on 09.02.2018. In such circumstances, he has taken steps to restore the appeal and the delay of 2390 days occurred.

5.I have carefully considered the submissions made by the learned counsel for the petitioner and also perused the materials available on record.

6.The delay caused is for a long period. The reasons assigned for the delay caused are not convincing and acceptable, as the delay period is more than six years and 6 months.

7.Considering the facts and circumstances of the case, the petitioner lacks bona fides and hence, this petition stands dismissed. Consequently, the petition for restoration is also rejected.

20.11.2024

NCC:Yes/No

Index:Yes/No

Internet::Yes/No



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C.M.P(MD)No.13865 of 2024

To

1. The Additional Subordinate Court,
Thanjavur.

2. The District Munsif Court,
Thiruvaiyaru.



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C.M.P(MD)No.13865 of 2024

R. KALAIMATHI,J.

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