

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. (S).13 OF 2015
(Arising out of S.L.P. (C) No.16050 of 2013)

RAJAMANICKAM & ANR.

Appellant(s)

VERSUS

ALAMELU & ANR.

Respondent(s)

O R D E R

Leave granted.

This appeal arises out of an order dated 5th November, 2012 passed by the High Court of Judicature at Madras whereby C.M.A. No. S.R. 88472 of 2011 filed by the appellants has been dismissed on the ground that the same is barred by limitation.

O.S. No.102 of 2004 filed by the respondents for partition of the property jointly held by them with the defendants was decreed ex-parte by the trial court of Additional District Judge (Fast Track Court No.2) Salem on 3rd August, 2005. The defendants-appellants herein filed I.A.No.87 of 2005 for setting aside the ex parte decree which application was dismissed by the court on 12th December, 2008 with costs. Aggrieved, the appellants preferred C.M.A No. SR 88472 of 2011 with an application for condonation of 938 days delay in the filing of the said appeal. The High Court has while declining to condone the delay of 938 days not only dismissed the application for condonation but also C.M.A.No.S.R. 88472 of 2011 as barred by limitation. This appeal assails the correctness of the said order as mentioned earlier.

We have heard learned counsel for the parties at some length. We are of the view that in the facts and circumstances of the case, the appellants have made out a case for condonation and that the High Court ought to have condoned the delay in the filing of the appeal, if not unconditionally at least subject to payment of a suitable cost that would have compensated the other side for the inconvenience caused to them arising out of the delay. We accordingly allow this appeal, condone the delay in the filing of C.M.A.No. SR 88472 of 2011 subject to payment of Rs.50,000/- (Rupees fifty thousand) as costs to be paid to the plaintiff-respondents. Consequently, M.P.No.1 of 2011 shall stand allowed. The High Court may now hear and dispose of appeal (C.M.A.No. SR 88472 of 2011) on its merits in accordance with law. The costs shall be deposited by the appellants before the High Court within six weeks from today.

.....J.
(T.S. THAKUR)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI
DATED 05th January, 2015.

ITEM NO.41

COURT NO.2

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 16050/2013

(Arising out of impugned final judgment and order dated 05/11/2012 in CMA No. 88472/2011 passed by the High Court Of Madras)

RAJAMANICKAM & ANR.

Petitioner(s)

VERSUS

ALAMELU & ANR.

Respondent(s)

(with interim relief and office report)

Date : 05/01/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.
Ms. Shakun Sharma, Adv.
Ms. Mary Mitzy, Adv.
Mr. V. Vijay Anand, Adv.

For Respondent(s) Mr. Ratnakar Das, Sr. Adv.
Mr. G. Sivabala Murugani, Adv.
Mr. L. K. Pandey, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, this appeal is allowed:

"...We accordingly allow this appeal, condone the delay in the filing of C.M.A.No. SR 88472 of 2011 subject to payment of Rs.50,000/- (Rupees fifty thousand) as costs to be paid to the plaintiff-respondents. Consequently, M.P.No.1 of 2011 shall stand allowed. The High Court may now hear and dispose of appeal (C.M.A.No. SR 88472 of 2011) on its merits in accordance with law. The costs shall be deposited by the appellants before the High Court within six weeks from today."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)