



CRP.No. 1620 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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Ramkumar

.. Petitioner

Versus

1. Palaniyammal

2. Tamilselvi

.. Respondents

Civ0il Revision Petition is filed under Article 227 of the Constitution of India, prays, to set aside the fair and decretal order dated 07.03.2020 passed in I.A.No. 96 of 2019 in Unnumbered A.S. in CFR.No. 6054 of 2019 passed by the Principal District Judge, Erode.

For Petitioner : Mr.J. Ranjith Kumar

For Respondents : Mr.M.P. Rajendran :

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 07.03.2020 passed in I.A.No. 96 of 2019 in Unnumbered A.S. in CFR.No. 6054 of 2019 passed by the learned Principal District Judge, Erode.



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2. Heard both sides and perused the materials available on record.

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3. The revision petitioner/plaintiff has filed the suit in O.S.No.59 of 2014 before the Subordinate Court, Sathyamangalam, for partition and preliminary decree to divide the suit property into three equal shares and allot one such share to the plaintiff and separate possession of the same and for costs. After perusing the records, the suit was dismissed by the trial Court on 07.11.2016. Subsequently, the revision petitioner has preferred an appeal before the learned Principal District Judge, Erode, against the judgment and decree dated 07.11.2016. Subsequently, the revision petitioner has filed I.A.No. 96 of 2019 in Unnumbered Appeal Suit in C.F.R.No. 6054 of 2019 before the learned Principal District Judge, Erode, under Order 41 Rule 3(A) and Section 151 of CPC., seeking to condone the delay of 978 days in filing the Appeal Suit. After perusing the records, the trial Court dismissed the said application by order dated 07.03.2020 in I.A.No.96 of 2019 in Unnumbered A.S. in CFR.No. 6054 of 2019. Aggrieved by the said order, the revision petitioner has filed the present Civil Revision Petition.



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4. The learned counsel for the revision petitioner contended that the revision petitioner has preferred an appeal against the judgment and decree dated 07.11.2016 in O.S.No.59 of 2014. Unfortunately, he went to Kollegal, Karnataka State, for his business work and stayed there from October, 2016 for the past 2 1/2 years and now only returned from Kollegal. Therefore, due to the above reasons, he did not prefer any appeal within prescribed time and hence, there is a delay of 978 days in filing the appeal suit. Hence, the revision petitioner prays to set aside the findings of the trial Court.

5. The learned counsel for the respondents contended that the revision petitioner has not produced any materials to show that he was carrying on the business at Kollegal and also stayed there. In the absence of any particulars, the said allegations are false. Therefore, the revision petitioner has not assigned sufficient reason to condone the inordinate delay of 978 days. The petitioner has failed to explain each and every day's delay. As the petitioner has not filed any appeal well within the time as mandated under Article 116(a) of the Limitation Act, and hence, the said application is not maintainable. Therefore, the respondents pray to dismiss the above Revision.



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6. On a perusal of the records, it reveals that the suit in O.S.No.59 of 2014 was filed by the revision petitioner/plaintiff, for partition and preliminary decree. The respondents 1 & 2 are the mother and sister of the revision petitioner. The 1st respondent had filed written statement but had not cross-examined the PW1 and hence, she was set ex-parte. The 2nd respondent have not contested the suit by filing written statement before the trial Court. On the side of the petitioner/plaintiff, PW1-Ramkumar and PW2-Vadivel have been examined and Ex.A1 to Ex.A11 have been marked. On the side of the respondents, no witnesses have been examined and Ex.R1 was marked through PW1. Therefore, the respondents were being called absent and set ex-parte and subsequently, the suit was dismissed by the trial Court on 07.11.2016.

7. It is also seen that the revision petitioner has not established any sufficient cause for not preferring the appeal within prescribed time. The plea taken up by the petitioner is that he went to Kollegal, Karnataka, for his business affairs and stayed there from October, 2016 for the past 2 1/2 years, he was held up at Kollegal. Therefore, he could not prefer the appeal in time and hence, there is a delay of 978 days in preferring the appeal. It is strongly



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objected by the respondents that the reason was assigned by the petitioner is an utter false and there is no document to show that he was carrying on business at Kollegal.

8. PW1-Ramkumar in his cross-examination has deposed is as follows:-

"கொள்ளைகாலில் நான் ரியல் எஸ்டேட் தொழில் செய்து வந்தேன். அதற்கு உரிமம் பெறவில்லை. எனது மனைவி, மக்கள் இருப்பது சத்தியமங்கலத்தில் என்றால் சரிதான். நான் தொடர்ச்சியாக கொள்ளைகாலில்தான் இருந்தேன். தொழில் காரணமாக என்னால் அடிக்கடி சத்தியமங்கலம் வர முடியவில்லை. வாரத்திற்கு இருமுறை வர வாய்ப்பு உண்டா என்றால் இல்லை. நான் கொள்ளைகாலில் தங்கி இருந்ததைக் காட்ட ஆவணம் உள்ளது. தேவைப்பட்டால் தாக்கல் செய்கிறேன். இதுவரை தாக்கல்செய்யவில்லை. நான் எந்த தேதியில் கொள்ளைகால் போய் எந்த தேதியில் திரும்பி வந்தேன் என்று சரியாகத் தெரியாது. 2 1/2 வருடம் அங்கு இருந்தேன்."

Though the reason was assigned by the petitioner that he went to Kollegal, Karnataka State, for his business affairs and stayed there, but, he has not filed any proof. There is no oral or documentary evidence to show that the petitioner was running a business at Kollegal.

9. On the other hand, the learned counsel for the respondents contended that the reason was assigned by the petitioner is not acceptable for the reason that the petitioner had regularly appeared before the criminal



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Court and gave evidence which was initiated by the first respondent and there is no merit in the application and it is liable to be dismissed. To support his contention, he has filed Ex.R1 is the certified copy of the Diary Extract of STC.No.805 of 2018 on the file of Judicial Magistrate Court, Sathyamangalm. On perusal of Ex.R1, it reveals that the petitioner who is cited A1 in the said case. In this regard, the PW1 in his cross examination deposed is as follows:-

"சத்தி குற்றவியல் நீதிமன்றத்தில் ஆஜராகியிருக்கிறேன். 2017 அல்லது 18 என்றால் ஞாபகம் இல்லை. குற்றவியல் நீதிமன்றம் சத்தியில் சாட்சியம் அளித்துள்ளேன். வருடம் ஞாபகம் இல்லை. கொள்ளைகாலில் இருந்து வந்துதான் நீதிமன்ற வாய்தாவிற்கு ஆஜரானேன்."

10. From the above evidence of PW1 and the contention of Ex.R1, it clearly shows that the petitioner has regularly appeared in criminal Cases before the learned Judicial Magistrate, Sathyamangalam, and therefore, the reason was assigned by the petitioner seeking to condone the delay of 978 days, is not acceptable one. It is also seen that the trial Court dismissed the suit on 07.11.2016. The petitioner has applied copy application on 15.07.2019 and it was made ready on 15.07.2019. The petitioner has preferred an appeal on 17.07.2019. By calculating the delay, it comes to 978



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days. The petitioner was very negligent in filing the appeal within the period of limitation. Further, PW1 in his cross examination has deposed is as follows:-

எங்களது வழக்கறிஞர் வீட்டில் இருந்து ஒரு பார்லாங் துரத்தில்தான் நான் குடியிருந்து வருகிறேன். தீர்ப்பிற்கு பின்னர் எனது வழக்கறிஞரிடம் மேல்முறையீடு செய்யும்படி சொன்னேன். அவர் தாக்கல் செய்தாரா என்று நான் கேட்கவில்லை. இந்த மனுவை 2016ம் ஆண்டே தாக்கல்செய்யும்படி சொன்னேன். என் வழக்கறிஞர் விட்டுவிட்டார். நானும் அதை பின்தொடராமல் விட்டுவிட்டேன். O.S.No. 59 of 2014 வழக்கிலும் STC.No.805 of 2018 வழக்கிலும் எனக்கு ஒரே வழக்கறிஞர் என்றால் சரிதான். மேற்படி வழக்குகளுக்காக நான் வழக்கறிஞரை சென்று சந்தித்தேன் என்றால் சரிதான்.

11. From the above evidence, it is very clear that the petitioner has been lethargic and negligent in conducting the case. Considering the reason was assigned by the petitioner, it is very clear that he has been lethargic and negligent in conducting the case and invented a reason as he was doing business at Kollegal, Karnataka State and stayed there, and held up for the past 2 1/2 years at Kollegal for filing the said application and he did not come to the Court with clean hands. Therefore, the reason was assigned by the petitioner is not satisfactory and each and every day's delay has not been explained by him and he did not file the appeal in time and hence, there is a delay of 978 days in filing the appeal. Hence, there is no merits and no bona-fide is found in the revision. Therefore, this Court is not inclined to allow



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the above Revision and accordingly, the above Revision is dismissed.

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12. With the above observations, the Civil Revision Petition is dismissed.

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Index : Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No

msm

To

1. The Principal District Judge, Erode.
2. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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