

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

**C.R.P.(NPD).No.548 of 2015
and M.P.No.1 of 2015**

Pernambut Municipality
represented by its Commissioner,
Pernambut, Vellore District.

... Petitioner

Vs.

1.Katheem Sadulla Basha (Died)
2.Katheem Basheer Ahmed
3.Katheem Salmabi
4.Katheem Afeed Hussain
5.Katheem Najima Banu
6.The President,
Pernambut Municipality,
Vellore District.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 19.09.2013 in I.A.No.15 of 2010 in A.S.No. of 2010 on the file of the Sub Court, Gudiyatham.

For Petitioner : Mr.M.Dhandapani

For Respondents : Mr.V.Lakshmi Narayanan (R2 to R6)

R1 - Died

ORDER

Challenging the fair and decreetal order passed in I.A.No.15 of 2010 in A.S.No. of 2010 on the file of the Sub Court, Gudiyatham, the 1st defendant has filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.418 of 1986 on the file of the District Munsif, Gudiyatham for declaration and injunction. After contest, the trial Court decreed the suit by its judgment and decree dated 06.09.2006. Thereafter, the 1st defendant filed the un-numbered First Appeal in A.S.No. of 2010 on the file of the Sub Court, Gudiyatham with a petition in I.A.No.15 of 2010 to condone the delay of 1222 days in preferring the Appeal. In the affidavit filed in support of the petition, in paragraph no.2 the petitioner/ 1st defendant has stated as follows:

“2.I state that I took full charge of the 3rd Grade Municipality as Executive Officer on 06.11.2009. I am totally unaware and Ignorant about the suit and passing of the decree in the above case on 06.09.2006. The previous officers who hold in charge of the Pernambut 3rd Grade Municipality had misplaced the records of the case files and hence I could not come across about the facts of the case. I came to know above the suit only in the 2nd week of Feb 2010 when the respondents Nos 2 to 6 made an attempt to commit trespass upon the suit property. Thereafter, I approached the counsel and obtained the judgment and decree from the Hon'ble

District Munsif Court, Gudiyatham on 23.03.2010 and I could come across about the fact of passing of the decree in the case on 06.09.2006 as against the Pernambut 3rd Grade Municipality for non prosecution of the case. I submit that due to lack of knowledge about the passing of the decree in the case on 06.09.2006 appeal could not be filed in time and hence it is delayed 1,222 days. The said delay had occasioned beyond my control and it is neither intentional nor wanton but due to the bonafide reasons supra. The respondents Nos 2 to 6 are not at all entitled to the suit property in any way but fraudulently obtained the decree. The 3rd Grade Pernambut Municipality alone is entitled to the suit property and it alone has been in exclusive, continuous possession and enjoyment of the same in its own way of right. The Pernambut 3rd Municipality has fair chance to succeed in the case. So the said delay of 1,222 days may be condoned in the larger interest of justice. Lest, the Pernambut 3rd Grade Municipality will be put to irreparable loss and hardship. The respondents will not be prejudiced in any way this petition.”

3.The plaintiffs filed their counter and opposed the petition. The lower Appellate Court, taking into consideration the case of both the parties, dismissed the application finding that the 1st defendant has not given any acceptable reason for condoning the long delay of 1222 days in filing the Appeal.

4. On a reading of the averment stated in paragraph no.2 of the affidavit, it is clear that only due to the lethargic and irresponsible attitude of the defendants, the delay of 1222 days in filing the Appeal had occurred. In the affidavit, the petitioner has not stated any acceptable reason for condoning the inordinate delay of 1222 days in filing the Appeal.

5. Mr. M. Dhandapani, the learned counsel appearing for the petitioner strenuously contended that only because of the collusive attitude of the defendants, the delay of 1222 days in filing the Appeal had occurred and therefore, in order to protect the public property, the delay may be condoned. In support of his contention, the learned counsel relied upon a judgment reported in ***(2015) 3 Supreme Court Cases 569 [Executive Officer, Antiyur Town Panchayat Vs. G. Arumugam (Dead) by Legal Representatives]*** wherein the Hon'ble Apex Court held that in the case of the delay on account of the deliberate lapses on the part of the Executive Officer of the Panchayat at the relevant time, the Court can condone the delay, preventing defeat of justice.

6. In the case on hand, though Mr. M. Dhandapani, contended that it was only because of the deliberate lapses on the part of the defendants,

the Appeal was not filed in time, the petitioner has not raised a single ground in the grounds of the Revision with regard to the same. When this point was not raised either before the lower Appellate Court or in the grounds of Revision, I am not inclined to interfere with the order passed by the Lower Appellate Court. In these circumstances, the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case. The order passed by the Lower Appellate Court is just and proper.

7.I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

10.06.2015

To

The Sub Court,
Gudiyatham.

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.548 of 2015
and M.P.No.1 of 2015

10.06.2015