



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 5/1/2015

C O R A M

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THE HONOURABLE Ms.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD) No.2650 of 2014

1. Muthiah
2. Narayanan

(Both are residing at
Mottayandi Thidal Village,
Kulathur Post, Aranthangi Taluk,
Pudukottai.)

... Petitioners

Vs

1. Chitra
2. Selvam
3. Karuppaiah
4. Kulayyan

(All are residing at Mottayandi Thidal Village,
Kulathur Post, Aranthangi Taluk,
Pudukkottai District.

5. The Tahsildar
Aranthangi Taluk Office
Aranthangi
Pudukottai District.

6. The State of Tamil Nadu
rep. By its District Collector
Pudukottai.

... Respondents

Petition filed under Asection 115 of the Civil Procedure Code praying to set aside the fair and decreetal order passed in I.A.No.279 of 2012 in A.S.No.7 of 2009 by the learned Subordinate Judge, Pudukottai dated 4/3/2013.

For petitioners

... Mr.K.Balasundharam

For respondents

... Mr.N.Balakrishnan
for R.R.1, 3 and 4.

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**ORDER**

This revision is directed against the dismissal of the petition filed under Section 5 of the Limitation Act, refusing to condone the delay of 255 days in restoring the appeal to file.

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2. The learned counsel appearing for the petitioners had contended that the appeal was posted on 8/12/2011 and that the second petitioner/second appellant was suffering from knee pain due to old age and was taking treatment and therefore, he could not meet his counsel. Only later, when he met the counsel, he learnt that the appeal was dismissed for default. Immediately, the restoration petition has been filed with a delay of 255 days.

3. The respondents opposed the same contending that as the appellants/petitioners did not have a good case on merit, they let it go for default deliberately and there is no bonafide in the contention of the petitioners.

4. The application was filed for restoration of appeal which was dismissed for default and it is not a suit where the proceedings are original in nature. If it is an appeal, the duty of the litigant ends with entrusting the papers to the counsel. It is for the counsel to follow up the case and conduct the same. Here, a litigant who has entrusted the papers to the Advocate has set back to relax with the confidence that his counsel would take care of his case. But unfortunately, the appeal was allowed to go for default. No doubt, in the affidavit filed in support of the delay petition, the reason stated is that of the immobility of the second petitioner and had not blamed the counsel for the petitioners. In such circumstances, the Court has to see whether there is any bonafide in the reasons assigned by the petitioners.

5. It has been spelt by the Supreme Court that any application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. In this case, the petitioners had entrusted the matter to the Advocate, who should have diligently prosecuted the appeal. The petitioners are put to jeopardy because of the fault of the Advocate. However, the petitioners had not offered any concocted or fanciful explanation, but without exposing the counsel, the second petitioner/second appellant had taken the blame on him and his illness. The delay is also not inordinate and it is only less than a year. Therefore, a strict approach need not be followed. As the substantial justice being paramount, the delay of 255 days in restoring the appeal has to be condoned.

6. In view of the above, this Civil Revision Petition is allowed and the Subordinate Judge, Pudukottai is directed to take up the appeal and dispose of the same, after giving due notice to the parties on or before 28/2/2015 and report compliance. No costs.

Sd/-

Assistant Registrar



To
The Subordinate Judge, Pudukottai.

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+1cc to Mr. K.Baalasundharam, Advocate in SR.No. 176

TS/13.01.2015/3P-6C

C.R.P.NPD. (MD) No.2650 of 2014

05.01.2015