



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 02.11.2015

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) Nos.2369, 2370 & 2371 of 2015
and M.P (MD) Nos.2, 2 & 2 of 2015

1.C.R.P (MD) No.2369 of 2015:-

1.Senthilkumar

2.P.Manikandan

.. Petitioners/Petitioners/Appellants/
Defendants

Vs.

Ganesh

.. Respondent/Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908 to set aside the fair and decreetal order dated 27.01.2015 passed in I.A.No.11 of 2014 in A.S.S.R.No.1458 of 2012 of the file of the learned Principal District Judge, Theni.

2.C.R.P (MD) No.2370 of 2015:-

1.Senthilkumar

2.Venkatesh

.. Petitioners/Petitioners/Appellants/
Defendants

Vs.

Ganesh

.. Respondent/Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908 to set aside the fair and decreetal order dated 27.01.2015 passed in I.A.No.12 of 2014 in A.S.S.R.No.1456 of 2012 of the file of the learned Principal District Judge, Theni.

3.C.R.P (MD) No.2371 of 2015:-

1.Senthilkumar

2.Venkatesh

.. Petitioners/Petitioners/Appellants/
Defendants

Vs.



Bhuvaneshwari

.. Respondent/Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908 to set aside the fair and decreetal order dated 27.01.2015 passed in I.A.No.13 of 2014 in A.S.S.R.No.1457 of 2012 of the file of the learned Principal District Judge, Theni.

For Petitioner : Mr.D.Srinivasa Raghavan
(in all C.R.P's) for Mr.D.Anbarasu

COMMON ORDER

All the three revision petitions, viz., C.R.P (MD) Nos.2369, 2370 & 2371 of 2015, have been consolidated together, heard jointly and disposed of in this common order at the admission stage itself, since the issue involved in all the revision petitions is common in nature.

2. Heard Mr.D.Srinivasa Raghavan, learned counsel appearing for the revision petitioners.

3. All the above revisions have been directed against the order dated 27.01.2015 and made in Interlocutory Applications in I.A.Nos.11, 12 and 13 of 2014 on the file of the learned Principal District Judge, Theni. All the three applications were filed to condone the delay of 634 days in representation of the appeals. But, it transpires from the records that the respondent herein had filed three suits as against the revision petitioners for recovery of money, viz., O.S.Nos.16, 17 and 18 of 2009. All the three suits were decreed. Challenging the Judgment and Decree passed by the learned Sub Judge, Uthamapalayam, dated 15.11.2011, the revision petitioners had filed three appeals before the learned Principal District Judge, Theni. Since certain defects were found, the appeals were returned for the compliance of the defects pointed out therein. Since there was a delay of 634 days in representation, those applications were dismissed by the learned Principal District Judge, Theni on 27.01.2015. Challenging the correctness of the said order, the present revisions have been filed by the revision petitioners.

4. Mr.D.Srinivasa Raghavan, learned counsel appearing for the revision petitioners while advancing his argument has drawn the attention of this Court to paragraph No.6 of the order, wherein the learned Principal District Judge, Theni has observed that "*the expression 'sufficient cause has not been defined anywhere in the Code' and it is a question to be determined in the facts and circumstances of each case and therefore, a party should not be* ~~deemed to be negligent~~ *unless, there has been something equivalent to misconduct or gross negligence on his part. Necessary materials should be on record that the applicant was diligent and vigilant*".



5. This Court has perused the grounds of revision along with the impugned orders.

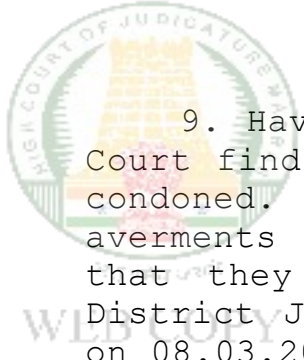
6. Now the appeals are yet to be numbered. Unless the delay of 634 days is condoned in all the three applications, the above said appeals cannot be numbered.

7. Mr.D.Srinivasa Raghavan, learned counsel appearing for the revision petitioners in support of his argument has placed reliance upon an unreported Judgment rendered by a learned Single Judge of this Court in *D.Muralidharan Vs. Chinnappan (died) 1.Pavathai 2.C.Padmavathi and C.Shanmughasundaram* decided on 06.06.2007. In this case, it has been observed in paragraph No.10 as under:-

"10. A similar question came up before a Division Bench of this Court and the Division Bench in its decision reported in 1993 TNLJ 375 (cited supra) held that delay in representation of papers happens several times due to the mistake of the advocates or the advocate's clerk and if there is undue delay in representation of the papers it can be compensated by awarding costs. The relevant portion of the order reads as under:-

"This is not a case wherein the appeal has been filed out of time. This is a case in which the appeal is filed in time. Therefore, it cannot be said that the decree under appeal has assumed finality and the right has been accrued to the respondent. The delay in representation of the papers in the instant case, cannot be put to the account of the party. Several times, it happens due to the mistake on the part of the advocate's clerk or the advocates in presenting the appeal. Therefore, the Court has to take care to see that the justice does not suffer in each cases. If there is any undue delay in representation of the papers it can be compensated by awarding costs. Therefore, we are of the view that when the appeal has been filed in time, but there is inordinate delay in representation of the papers returned for rectification of the defects, by the appellate Court, the delay can be condoned on taking a lenient view by compensating the other side on payment of costs."

8. This Court has gone through the above said decision along with the impugned orders passed by the learned Principal District Judge, Theni.



9. Having regard to the related facts and circumstances, this Court finds that the delay of 634 days in representation could be condoned. It is to be noted herein that in paragraph No.5 of the averments of the affidavit, the revision petitioners have stated that they had filed the appeals before the learned Principal District Judge, Theni in A.S.S.R.Nos.1456, 1457 and 1458 of 2012 on 08.03.2012. The Registry of the District Court had returned the papers for want of certain compliance on 13.03.2012 and in the meanwhile, the said papers were misplaced and they were not able to find out the papers within the time and hence, due to the above said reasons, the appeal papers were represented before the Court after the delay of 634 days. According to them, the delay was neither willful nor wanton, but due to the reasons stated above.

10. This reason was not accepted by the learned Principal District Judge, Theni and hence he had proceeded to dismiss those applications. However, considering the nature of the suits and the reasons assigned by the revision petitioners, this Court finds that, in the interest of Justice, it may be expedient to allow these revision petitions at the admission stage itself. Accordingly, these Civil Revision Petitions are allowed. The impugned orders in I.A.Nos.11, 12 and 13 of 2014 in A.S.S.R.Nos.1456, 1457 and 1458 of 2012 are set aside and the petitions in I.A.Nos.11, 12 and 13 of 2014 are allowed. The delay of 634 days in representation is condoned in all the three appeals. The learned Principal District Judge, Theni is directed to take the appeals on file, number the same and dispose the appeals on merits and in accordance with law. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Judge, Theni.

Copy to: The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court, Madurai

+One cc to Mr.D.Anbarasu, Advocate, SR.No.64340

ps

RL/4c/NGM/SS/23/11/2015

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and M.P(MD)Nos.2, 2 & 2 of 2015