

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

**C.R.P.(NPD).No.2170 of 2014
and M.P.No.1 of 2014**

A.Abdul Aziz

... Petitioner

Vs.

Dr.Periasamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.11.2013 made in I.A.No.82 of 2011 in un-numbered A.S.SR.No.5156 of 2011 on the file of the Sub Judge, Ponneri.

For Petitioner : Mr.V.Paul Das

For Respondent : Mr.A.L.Namasivayam

ORDER

Challenging the fair and final order passed in I.A.No.82 of 2011 in un-numbered A.S.No. of 2011 on the file of the Subordinate Court, Ponneri, the defendant in O.S.No.288 of 2004 on the file of the District Munsif Court, Thiruvottiyur, has filed the above Civil Revision Petition.

2.The plaintiff has filed the suit in O.S.No.288 of 2004 for recovery of a sum of Rs.1,00,000/- together with interest.

3.The trial Court decreed the suit. Aggrieved over the same, the defendant preferred an appeal with a delay of 81 days in filing the appeal. In the affidavit filed in support of the petition, the petitioner has stated that he was laid up with Typhoid fever and therefore, he could not file the appeal in time. Hence, there is delay of 81 days. The respondent/plaintiff filed his counter and contested the application stating that the reasons given by the petitioner cannot be accepted. The trial Court dismissed the application finding that the petitioner has not explained the reasons for the delay in a proper manner. Further, the Lower Appellate Court observed that the petitioner appeared in criminal cases on 25.03.2011, 20.05.2011 and 13.06.2011 before the Additional District Court, Ponneri.

4.Since the petitioner has filed the appeal challenging the judgment and decree passed by the trial Court and when he has stated that he was laid up with Typhoid, the Lower Appellate Court could have given an opportunity to challenge the judgment and decree passed by the trial Court. That apart, the delay in filing the appeal is only 81 days, which could have

been condoned on compensating the respondent/plaintiff.

5.In these circumstances, the delay of 81 days in filing the appeal is condoned on condition the petitioner/defendant paying a sum of Rs.2,500/- to the respondent/plaintiff within a period of two weeks from the date of receipt of a copy of this order. The application in I.A.No.82 of 2011 in un-numbered A.S.No. of 2011 stands allowed. On payment of cost of Rs.2,500/- within the stipulated time, the Subordinate Court, Ponneri is directed to number the appeal and dispose of the appeal within a period of three months from the date of numbering the appeal.

6.With this observation, the Civil Revision Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

25.01.2016

To

The Sub Judge,
Ponneri.

M.DURAIWAMY,J.
va

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