

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2016

Delivered on: 09.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)No.2213 of 2009 &
M.P.No.1 of 2013

1. Bomma Naicker
2. Ponnusamy
3. Appanaicker
4. Chinna Appanaicker
5. Rangasamy

.... Petitioners

vs

1. Pappa
2. Sekar, Minor, rep. by mother
and Natural guardian, Pappa
3. Chinnappan
4. Amalraj

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the learned Sub Judge, Bhavani taluk, Erode District, dated 22.4.2009 made in I.A.No.144 of 2008 in C.F.R.No.6461 of 2008.

For petitioner : Mr.M.Muthappan

For respondent : Mr.T.Murugamanikkam

ORDER

This Civil Revision Petition has been filed against the order of the learned Sub Judge, Bhavani taluk, Erode District, dated 22.4.2009 passed in I.A.No.144 of 2008 in C.F.R.No.6461 of 2008, dismissing the interlocutory application filed by the petitioners, seeking condonation of 241 days in filing the appeal.

2. Heard both sides.

3. The respondents herein are the plaintiffs before the trial Court and they have approached the trial Court by filing a suit in O.S.No.87 of 2006 for the following reliefs, viz.,

a) declaring that the plaintiffs are entitled to free user of the B schedule of property to take lorry, tractor, cart, cattle and men from Nagalur Municppan palayam Road to the A schedule of property by easement of necessity;

b) a permanent injunction to restrain the 4th defendant, his legal heirs, agents and men from disturbing plaintiffs' peaceful user and enjoyment of B schedule of property for taking lorry, tractor, cart, cattle, and men from Nagalur-Muniappanpalayam Road to their land A schedule of property by means;

- c) a permanent injunction to restrain the 4th defendant from altering the physics-1 features of the B schedule of property by any means; and
- d) awarding the costs.

4. The petitioners herein are the defendants in the suit. Defending the above suit, they filed a written statement.

5. The trial Court, after considering the evidence both oral and documentary in support of rival claims, by a detailed judgment, decreed the suit vide judgment dated 29.6.2007. As against the said judgment and decree, the petitioners/defendants approached the first appellate Court. While approaching the first appellate Court, there occasioned a delay of 241 days and for condoning the same, the petitioners/defendants filed an interlocutory application in I.A.No.144 of 2008. In the said I.A., the reasons for the delay were stated to be that the 4th petitioner/4th defendant who was looking after the suit proceedings on behalf other defendants, during the relevant time, fell ill since suffering from Jaundice and he was taking treatment from a rural doctor. Therefore, he could not give instructions to his counsel for filing the appeal in time.

6. The said interlocutory application was sought to be resisted by the respondents/plaintiffs, stating that there was no proper reason given by the petitioners/defendants and no specific details have been furnished in the interlocutory application as regards the date and duration of illness suffered by the 4th petitioner. Moreover, it was the case of the respondents/plaintiffs that in collateral proceedings before another Court, the 4th defendant had been regularly appearing, which was admitted fact. Therefore, the affidavit, seeking condonation of delay did not carry conviction and the same is contrary to the fact and truth.

7. The learned appellate Judge, after hearing the rival submissions and the pleadings, had passed a detailed order, dismissing the condone delay petition. The learned Judge accepted the contentions put forth by the respondents/plaintiffs, that there was absolutely no legally acceptable explanation and the affidavit filed in support of the interlocutory application, did not contain any specific facts as to the nature and duration of the ailment, etc. The learned Judge also relied upon a decision cited by the respondents/plaintiffs reported in 2007(3) L.W.146, in which, this Court has taken a view that there was no proper explanation for condonation of delay since

there also, the person who sought condonation of delay, had suffered from Jaundice, but not divulged any information as to from whom, he had taken treatment and duration of treatment etc. The petition, seeking condoning the delay of 1654 days, which allowed by the Court below on payment of costs, was set aside by this Court in the above referred decision.

8. Though in this case, the delay is not as inordinate as in the case relied upon by the lower appellate Judge, yet the delay of 241 days needs to be explained properly and the petitioners, seeking the condonation of delay, cannot take the Court for granted as to the relief prayed for. In any event, the learned trial Court has passed a detailed judgment and decree in favour of the respondents/plaintiffs as early as in 2007 and reopening of any appeal at this stage, would certainly upset the applecart and status quo that has been prevalent as between the parties for many years.

9. The learned counsel appearing for the petitioners, reiterated the submissions on the basis of the pleadings which averred before the lower Court and also cited a decision reported in (2005) 3 SCC 752 (***State of Nagaland versus Lipok AO and others***). However, the

decision may not much helpful to the petitioners since the same lays down a principle that proof of sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the Court. In the instant case, no sufficient cause was shown by the petitioners/defendants for the delay. Moreover, the decision cited by the learned counsel for the petitioners was in relation to the delay on the part of the Government, which, the Hon'ble Supreme Court had held that certain amount of latitude is permissible since the State was an impersonal machinery and it cannot be put on the same footing as an individual. Therefore, the decision cited by the learned counsel for the petitioners/defendants, is of no consequence as far as the factual matrix of the present case is concerned.

10. In view of the above discussion, this Court is of the view that the impugned order passed by the learned appellate Judge, dated 22.4.2009 in I.A.No.144 of 2008, does not call for interference.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

Internet: yes/no
Index: Yes/no

09-11-2016

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V.PARTHIBAN, J.
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Pre delivery Order in
CRP PD No.2213 of 2013

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