

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.161 of 2016

P.Sivaraj

... Petitioner

Vs.

1.R.Selvaraj

2.K.P.Rajendran

3.M.M.Palanisamy

4.Subramaniam

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 23.04.2013 passed in I.A.No.46 of 2012 in un-numbered A.S.No. of 2012 on the file of the Principal District and Sessions Court, Namakkal.

For Petitioner : Mr.D.Shivakumaran

For Respondents : Mr.P.Valliappan (R1 & R2)

Mr.S.Saravanan (R3 & R4)

ORDER

Challenging the order passed in I.A.No.46 of 2012 in un-numbered A.S.No. of 2012 on the file of the Principal District and Sessions Court, Namakkal, the defendant in O.S.No.1523 of 2002 on the file of the Subordinate Court, Namakkal, has filed the above Civil Revision Petition.

2.The respondents 1 & 2 filed the suit in O.S.No.1523 of 2002 for specific performance.

3.After contest, the trial Court decreed the suit on 29.07.2011. Aggrieved over the same, the defendant preferred an appeal before the Principal District and Sessions Court, Namakkal with an application in I.A.No.46 of 2012 to condone the delay of 255 days in filing the appeal.

4.The defendant sold the property to the respondents 3 & 4, who are the defendants 2 & 3, prior to the filing of the suit. However, the respondents 3 & 4 remained absent before the trial Court. In the affidavit filed in support of the application in I.A.No.46 of 2012, the defendant has stated that his mother had fallen down and was taking treatment in the hospital. Further, he has stated that his son also fractured his hip and suffered three fractures and was not in a position to move around. The defendant has stated that his son was also taking treatment in the hospital. That apart, the defendant has stated that he himself was suffering from hernia and therefore, was not in a position to file the appeal in time. Though, he has given so many reasons, the defendant has not given a specific date in the affidavit when his mother fell down or when his son broke his hip or when he underwent treatment for hernia.

5. Without giving any details with regard to the ailments and treatment taken by the family members of the petitioner, the defendant sought to condone the delay of 255 days in filing the appeal. Even the document marked on the side of the defendant before the Lower Appellate Court as Ex.P1 relates to a surgery underwent by the defendant, which is after eleven months from the date of judgment and decree passed in the suit in O.S.No.1523 of 2002. In the absence of any sufficient reason given by the defendant for condoning the delay of 255 days, the Lower Appellate Court has rightly dismissed the petition.

6. It is settled position that unless a party seeking for condonation of the delay gives sufficient cause for condoning the delay, the delay should not be condoned.

7. The ratio laid down by the Hon'ble Supreme Court in **(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]** squarely applies to the facts and circumstances of the present case.

8. In these circumstances, I do not find any reason to interfere with the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

Index : No
Internet : Yes
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01.08.2016

To

The Principal District and Sessions Court,
Namakkal.

M.DURAIWAMY,J.
va

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