

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2236 of 2016

S.M.M.Balan

... Petitioner

..VS...

1. Annammal

2. Alexander

(Amalorbava Mary, (Dead)
(Dead as abated) reported
dead- steps not taken – petition
dismissed against she has abated)

3. Ronickkammal

4. S.Loordhu Mary

(Respondents 2 to 4 already remained
exparte before trial Court)

..Respondents 1,2,4 &5

Civil Revision Petition filed under Section 115 of the Code of Civil
Procedure against the fair and decreetal order dated 21.08.2014
passed in I.A.No.35 of 2013 in Unnumbered A.S.No. Of 2013 in
O.S.No.781 of 2006 on the file of the Principal Subordinate Judge, Salem.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.P.Jagadeesan (R1&2)

ORDER

Challenging the fair and final order dated 21.08.2014 passed in I.A.No.35 of 2013 in Unnumbered A.S.No. Of 2013, on the file of the Principal Subordinate Court, Salem, the plaintiff in O.S.No.781 of 2006 on the file of the Principal Subordinate Court, Salem, has filed the above Civil Revision Petition.

2. Heard the learned counsel for the petitioner and Mr.P.Jagadeesan, learned counsel appearing for respondents 1 and 2.

3. The plaintiff filed the suit in O.S.No.781 of 2006 for permanent injunction. The trial Court, dismissed the suit by its Judgment and decree dated 09.04.2008, against which, the plaintiff preferred an appeal with an application in I.A.No.35 of 2013 to condone the delay of 1755 days in filing the appeal. In the affidavit filed in support of the application, the plaintiff has stated that he was suffering from Typhoid and therefore, he was not in a position to file the appeal in time. Apart from stating that he was suffering from Typhoid for 5 years, the petitioner has not stated any other convincing reason for condoning the inordinate delay of 1755 days.

That apart, the petitioner/plaintiff has not produced any evidence to establish that he was suffering from Typhoid for 5 years.

4. The lower Appellate Court, taking into consideration case of both parties, rejected the application stating that the petitioner has not explained the reason for the delay in an acceptable manner. It is settled position that unless a party seeking for condonation of delay gives sufficient cause for the delay, the delay should not be condoned. The ratio laid down by the Hon'ble Supreme Court of India, in a Judgment reported in *(2015) 1 SCC 680 (H.Dohil Constructions Private Limited vs. Nahar Exports Limited and Another)* squarely applies to the facts and circumstances of the present case. In the case on hand, since the petitioner has failed to explain the reasons for the inordinate delay of 1755 days, the lower Appellate Court has rightly dismissed the application. 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 hence the same is dismissed. No costs.

08.08.2016

rg
To

The Principal Subordinate Court, Salem

M. DURAISWAMY,J.,
rg

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