

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.1083 of 2014

and

M.P.No.1 of 2014

1.The State of Tamil Nadu
Rep by The District Collector
Collectorate Building, Perundurai Road
Erode - 638 011.

2.The Executive Engineer
Public Works Department
Lower Bhavani Vendipalavam Kottam
Erode

3.The Assistant Engineer
Public Works Department
Lower Bhavani Vendipalavam Kottam
Erode

4.Villarasampatti Panchayat
By its President
Villarasampatti Post, Erode Taluk

.. Petitioners/Defendants/Petitioners

-Vs.-

1.T.Saravanan
S/o.Thangavel Gounder

2.V.Shri Gandhi
S/o.Velappa Gounder

.. Respondents/Plaintiffs/Respondents

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the order and decretal order dated 20.06.2013 made in I.A.No.728 of 2012 in A.S.SR.No.____ of 2012 on the file of the Principal Subordinate Court, Erode.

For Petitioner : Mr.Venugopal, Spl.G.P., (C.S)

For Respondent : Ms.P.T.Ramadevi,
for R1 and R2

ORDER

The present Civil Revision Petition has been filed challenging the impugned order dated 20.06.2013 made in I.A.No.728 of 2012 in A.S.SR.No.____ of 2012 on the file of the Principal Subordinate Court, Erode, wherein the application to condone the delay of 825 days in filing the appeal came to be dismissed.

2.The respondents herein as plaintiffs had filed the suit for permanent injunction and mandatory injunction. The revision petitioners/defendants filed written statement and contested the suit. The suit was decreed on 03.12.2009. Thereafter, the revision petitioners/defendants filed an appeal along with an application for condonation of delay of 825 days in filing the appeal. However,

the said application came to be dismissed, as against which the present Civil Revision Petition has been preferred.

3.The learned Special Government Pleader appearing for the revision petitioners would submit that since the copy of the judgment passed by the Trial Court got mixed with other office files, the revision petitioners were not in position to prefer the appeal in time. Hence, he prayed for allowing the revision.

4.On the other hand, the learned counsel appearing for the respondents would submit that the delay has not been properly explained. Without any proper reason, the revision petitioners/defendants have come forward with the present revision only with a view to drag on the proceeding and to prevent the respondents from enjoying the fruits of the decree. Hence, he prayed for dismissal of the revision.

5.Considering the rival submissions made by both sides and on perusal of the typed set of papers, it is seen that the respondents herein as plaintiffs had filed the suit in O.S.No.525 of 2007 against four defendants for permanent injunction restraining the defendants and their men from forming a road in the

suit property or laying underground pipe line and for mandatory injunction directing the defendants 1 to 3 to remove all encroachments in BCDE portion of the suit property and restore the same to the original position within a specified time. The fourth defendant filed written statement and contested the suit. The said written statement was adopted by the other defendants. After contest, a commissioner was appointed, who inspected the property and filed a report along with plan. Thereafter, the suit was decreed. On the side of the defendants no one was examined and no document was marked. But the revision petitioners/defendants preferred an appeal against the judgment and decree passed by the Trial Court along with an application to condone the delay of 825 days. A perusal of the affidavit would show that the averments made therein was very vague and the delay was not properly explained.

6.As per the dictum of the Hon'ble Apex Court reported in ***AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)***, it was specifically held that length of delay is immaterial, but the acceptability of the explanation is the only criterion. It is appropriate to incorporate para-9 of the said decision:

"9.It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is

within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court."

7. At this juncture, it would also be appropriate to consider the dictum laid down in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**), wherein it was held that while considering the applications for condonation of delay under [Section 5](#) of

the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason.

8.Considering the facts of the present case in the light of the above decisions, I am of the view that there is no sufficient reason to condone the delay. Hence, I do not find any reason to interfere with the order and decreetal order dated 20.06.2013 made in I.A.No.728 of 2012 in A.S.SR.No.____ of 2012 on the file of the Principal Subordinate Court, Erode.

9.In fine, the present Civil Revision Petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No costs.

19.12.2016

pgp

Index:Yes/No

R.MALA, J.

pgp

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