

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.03.2016

CORAM

THE HONOURABLE DR. JUSTICE. **S.VIMALA**

CRP (NPD)No.749 of 2016
and
CMP.No.4130 of 2016

Smt.Kempammal (Died)

1.R.Krishnamurthy

2.R.Ramesh

3.R.Sivakumar@Grason

...

Petitioners

. **.Vs..**

1.C.Shankar

2.C.Saroja

Lakshmi (died)

3.C.Nanjundan

4.C.Krishnan

5.C.Yeshodha

C.Rajan (since deceased)

6.C.Meena

7. C.Vasudevan

8. C.Ravi

9.Dhanalakshmi

10.Anand

11. Priya

...

Respondents

Prayer:- Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Final Order dated 07.08.2015 passed in I.A.No.66 of 2014 in ASCFR No.1544 of 2014 on the file of the District Judge at Udhagamandalam.

For Petitioners : Mr.S.Kingston Jerold

ORDER

This Civil Revision Petition has been filed against the Fair and Final Order dated 07.08.2015 passed in I.A.No.66 of 2014 in ASCFR No.1544 of 2014 on the file of the learned District Judge, Udhagamandalam, condoning the delay of 95 days in presenting the appeal.

2. The first respondent herein (who is the fifth defendant in O.S.90 of 2010), as the petitioner had filed an application in I.A.No.66 of 2014, seeking to condone the delay of 95 days in presenting the appeal.

2.1. The Court below, by the order dated 31.07.2015, condoned the delay subject to condition of the appellant/petitioner paying a cost of Rs.1,000/- to the respondents 2 to 9 and 11 to 16 on or before 06.08.2015. Aggrieved over the order allowing the petition, the respondents 2 to 4 in I.A.No.66 of 2014 have filed this Civil Revision Petition.

4. The learned counsel for the revision petitioner submitted that the delay is not 95 days but 128 days and the Court has not even the calculated the amount of delay accurately and correctly. Even assuming that the delay is 128 days, the question is whether there is any justification for the Court to condone the delay or not. The reasons stated by the applicant is that since he was suffering from severe back pain, he was not able to attend the Court for cross examination.

5. From the counter affidavit filed before the lower court, it is seen that from 11.02.2016 to 15.03.2016 the applicant did not meet his counsel at all. In such circumstances, it is alleged that the lower Court should have dismissed the application filed to condone the delay. However, the lower Court has relied upon the decision reported in **2011 1 CTC 276** wherein it is pointed out that the Court should take lenient view in condoning the delay.

6. It is also submitted that considering the amount of delay involved, the cost awarded should have been high. This Court feels it appropriate to enhance the cost from Rs.1,000/- to Rs.3,000/, and accordingly the first respondent herein/petitioner in I.A.No.66 of 2015, shall pay cost of Rs.3,000/- to the revision petitioners herein, within a period of two weeks from the date of receipt of a copy of this order. As the respondents 5, 7 to 9 and 11 to 16

remains exparte before the Lower Court, no cost is ordered to be payable to them.

7. As the delay is condoned, the appellate Court is directed to take the appeal on file and after issuing notice to all parties and after hearing all of them, to dispose of the appeal, within a period of three months from the date of receipt of a copy of this order.

This Civil Revision Petition is ordered accordingly. No costs.
Consequently, connected Miscellaneous Petition is closed.

14.03.2016

Index : Yes/No
Internet: Yes/No
arr/ogy

To

The District Judge, Udhagamandalam.

S.VIMALA.J

arr/ogy

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Crl.R.C.Nos.937 and 938 of 2007

03.07.2013