

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.4400 of 2012

and

M.P.No.1 of 2012

G.Nataraj

.. Petitioner

Vs

Sagunthala

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and the decreetal order dated 19.10.2012 made in I.A.No.185 of 2012 in A.S.CFR.No.11180 of 2012 (Transferred from the Principal District Court, Erode) on the file of the Principal District Court, Tiruppur.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Kalyanaraman

ORDER

The Civil Revision Petition is filed against the fair and the decreetal order dated 19.10.2012 made in I.A.No.185 of 2012 in A.S.CFR.No.11180 of 2012 (Transferred from the Principal District Court, Erode) on the file of the Principal District Court, Tiruppur.

2.The petitioner is the appellant/defendant in A.S.CFR.No.11180 of 2012, on the file of Principal District Judge, Erode. The respondent / plaintiff has filed the above suit against this petitioner / defendant for recovery of amount of a sum of Rs.1,78,725/- with the future interest on the Principal amount of Rs.1,50,000/-.

3.The said suit was decreed on 21.10.2011 by the Subordinate Court, Dharapuram. Against the said judgment and decree in O.S.No.41 of 2009 dated 21.10.2011, the petitioner / appellant has preferred and filed an appeal before the learned District and Sessions Judge, Erode. The learned District and Sessions Judge, Tiruppur with a delay of 239 days in filing the said appeal. The said condone delay petition was numbered in I.A.No.185 of 2012 in ASCFR.No.11180 of 2012.

4.The case of the petitioner is that though the petitioner has applied for the certified copies of the judgment and decree passed by the trial Court on 21.10.2011 in O.S.No.41 of 2009 and the copies were received by the petitioner on 30.11.2011. The said certified copies along with bundle were entrusted with the counsel in the 3rd week of December 2011. In the meantime, the petitioner's only daughter Sudhadevi was eloped with her lover without the knowledge of the petitioner's family in the 4th week of December 2011. Therefore, for the past 7 months the petitioner and his family members were forced to search for their daughter. Only in the month of September 2012 the petitioner's daughter was found with her lover that they were brought and their marriage was conducted. Therefore, due to the above sufferings and mental worries, this petitioner cannot approach his counsel and making arrangement for filing the appeal within the time limit. Therefore, there is a delay in 239 days of the said appeal and prayed the first Appellate Court to condone the delay of 239 days in filing the above civil revision petition.

5.The case of the respondent is that this petition is false and is not maintainable in law. The respondent further states that the

averments made by the petitioner is not proved one which should be pressed by the petitioner / appellant. Since, the amount under the promissory note was not paid, this respondent sent a pre-suit notice demanding to pay the promissory note amount with interest. But, there was no response from the petitioner / defendant. Hence, the suit was instituted for the recovery of amount before the trial Court. The petitioner / defendant dragged on the case for several years and after due enquiry the trial Court has pronounced the judgment and decree.

6.The respondent also states that only because of getting the mercy of the Court, this petitioner has given the above false statement about his daughter was eloped with her lover. In fact, after knowing and receiving notice in E.P. filed by the respondent, this petitioner has filed the above appeal with delay of 239 days. Therefore, he sought for the appellate Court to dismiss the condone delay application, since no reason has given by the petitioner for the delay of 239 days, due to the negligence and carelessness of the petitioner, he has to pay the cost.

7.Considering both side arguments and perused the documents,

the learned Principal District Judge, Tiruppur has dismissed the above application on 19.10.2012 on the ground that the petitioner has not given valid reasons for the delay of 239 days. The learned Judge also given reason that though the petitioner has given the reason not filing the appeal within the time limit that her daughter eloped with her lover. He has not given exact date when his daughter eloped with her lover and when they have found out and the date of marriage when they conducted. The learned Judge also accepted the reason given by the respondent that the respondent rightly pointed out that no document has been filed to show whether the petitioner or any other person has filed any complaint to the police. Accepting the contention of the respondent that the petitioner invented the reason for filing the condone delay petition, the learned Judge has dismissed the application. Apart from this, the learned Judge saying that to condone the delay, the petitioner ought to have given each and every day delay has to be explained properly but the petitioner has not given any acceptable reason for the delay of 239 days. Accordingly, this petition was dismissed by the learned Judge on 19.10.2012. Challenging the above order, the petitioner has filed the present civil revision petition in CRP(NPD)No.4400 of 2012 before this Court.

8.Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.S.Kalyanaraman, learned counsel appearing for the respondent.

9.When the appeal was filed and the date of admission, this Court granted an order of interim stay as prayed for by the petitioner on 03.12.2012, the said order of stay in operation.

10.Though the decree was passed on 21.10.2011 and the appeal has been filed with the delay of 239 days for giving reason one or other by the petitioner / defendant. The Hon'ble Apex Court and this Court categorically held that the reason has been given for the said delay for each and every day to be explained, but the petitioner given only reason that his only daughter was eloped with her lover and the entire family were searched whereabouts of his daughter for more than 7 months. The reason given by the petitioner has to be considered in the interest of justice and mercy.

11.Apart from this, the suit was decreed and admittedly the petitioner has filed appeal and sufficient opportunity to be given to the petitioner / defendant to challenge the decree about the validness of

the decree in the Appeal. In fact, the first appellate Court has said that condonation of delay is the matter of discretion of Court, the length of delay has not the matter acceptability of the explanation for the delay is only criteria. As per the Order 41 Rule 3-A and Section 151 of C.P.C., it is discretion of only the delay of certain limited period, since the suit was passed on merits, this petitioner / defendant having every right to contest the appeal. For the interest of both parties, just and necessary by giving an opportunity to the petitioner / appellant in the first appeal, by setting aside the order made in I.A.No.185 of 2012 in A.S.CFR.No.11180 of 2012 dated 19.10.2012 is just and necessary to direct the petitioner to deposit 50% of the decree amount before the first Appellate Court within a period of four weeks from the date of receipt of a copy of this order.

12.Accordingly, I am inclined to pass the following orders:

(a)This civil revision petition is allowed by setting aside the order passed in I.A.No.185 of 2012 in AS.CFR.No.11180 of 2012 dated 19.10.2012, on the file of Principal District Court, Tiruppur, on condition that the petitioner / appellant should deposit 50% of the decree

amount before the Principal District Court, Tiruppur, within a period of four weeks from the date of receipt of a copy of this order.

(b)The first Appellate Court is directed to number the appeal and thereafter to dispose the same within a period of four months.

13. Therefore, the Civil Revision Petition is allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2016

vs

Note: Issue order copy on 01.09.2016.

Index: Yes.
Internet: Yes.

To

The Principal District Court,
Tiruppur.

M.V.MURALIDARAN.J.,

VS

C.R.P.(NPD)No.4400 of 2012
and
M.P.No.1 of 2012

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