



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Twelfth day of July Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice NOOTY. RAMAMOHANA RAO
and

The Hon`ble Mr.Justice S.S.SUNDAR

CMP(MD) No.6050 of 2016

IN

WA(MD) No.SR21937 of 2016

DR.S.PACKIAM,
GOVERNMENT HOSPITAL, PALANI,
DINDIGUL DISTRICT.

... PETITIONER/APPELLANT/
9th RESPONDENT

Vs

1 P.VIJAYA, ... 1st RESPONDENT/WRIT PETITIONER

2 THE GOVT. OF TAMIL NADU,
REP BY THE HEALTH SECRETARY, HEALTH
DEPARTMENT, ST. GEORGE FORT, CHENNAI-09.

3 THE DIRECTOR OF MEDICAL & RURAL, HEALTH SERVICES,
CHENNAI-06.

4 THE JOINT DIRECTOR OF HEALTH SERVICES, DINDIGUL DISTRICT,
DINDIGUL.

5 THE GOVT. HOSPITAL, PALANI
REP. BY THE MEDICAL OFFICER,

6 THE SPEICAL OFFICER,
CHIEF MINISTERS SPECIAL CELL, ST. GEORGE FORT, CHENNAI-09.

... 2nd to 6th RESPONDENTS/
1st to 5th RESPONDENTS

7 DR.K.SENGODEN,
GOVERNMENT HOSPITAL, PALANI, DINDIGUL DISTRICT.

8 VIMALA,
MATERNITY ASSISTANT, GOVERNMENT HOSPITAL,
UDUMALAIPETTAI, COIMBATORE DISTRICT.

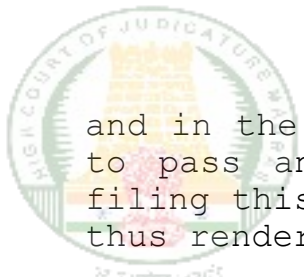
9 SIVAGAMI,
NURSE, GOVERNMENT HOSPITAL PALANI, DINDIGUL DISTRICT.

... 7th to 9th RESPONDENTS/
6th to 8th RESPONDENTS

10 K.RENUGA, NURSE

<https://hcservices.ecourts.gov.in/hoservices/>
GOVERNMENT HOSPITAL PALANI, DINDIGUL DISTRICT.

... 10th RESPONDENT/10th RESPONDENT



Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order to condone the delay of 1153 days occurred in filing this writ appeal pending disposal of the main writ appeal and thus render justice.

PRAYER IN WA(MD) No.SR21937 of 2016:

Writ Appeal against the order dated 12.02.2013 passed in WP.(MD).No.10514 of 2006 on the file of this Hon'ble Court, specifically the portion of the order passed "to recover the compensation amount from this appellant" and allow the Writ Appeal.

Prayer in WP(MD). 10514/ 2006 :

Writ Petition filed under Article 226 of the Constitution of India, for issue of Writ of Mandamus, to direct the 1st respondent to pay compensation to the petitioner for the death of her new born male baby in 4th respondent hospital on 16/04/1998 due to the negligence on the part of the staff of 4th respondent hospital, which is the matter of 3rd respondent's communication to the 5th respondent vide O.M.No. 587/CM/04 dated 27/01/04 .

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. A.THIRUMURTHY, Advocate for the petitioner the court made the following order:-

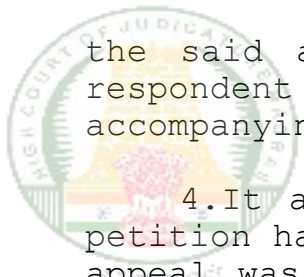
ORDER

(Order of the Court was made by **NOOTY .RAMAMOohana RAO, J**)

This application has been moved seeking condonation of delay of 1153 days in preferring the accompanying writ appeal under clause 15 of the Letters Patent.

2.It is appropriate to notice that Writ Petition (MD) No.10514 of 2006 came to be instituted by a mother, alleging professional negligence on the part of the Doctors attached to the Government Hospital, Palani, Dindigul District consequence of which resulted in the death of her baby boy. In the said writ petition, the present appellant is impleaded in eo nomine capacity as the ninth respondent, apart from impleading the Government of Tamil nadu, Director of Medical and Rural Health Services, Joint Director of Health Services and the Government Hospital, at Palani as respondents 1 to 4 thereto.

3.Learned Additional Government Pleader entered appearance on behalf of the respondents 1 to 5 in that writ petition. The respondents 6 to 10 are the other staff against whom, negligence has also been attributed. Though service was effected, they have not preferred to contest the said writ petition. That writ petition came to be decided on 12.02.2013 directing the first respondent State to pay a sum of Rs.3 lakhs as compensation to the petitioner therein within a period of three months from the date of receipt of a copy of the said order. The learned single Judge has also directed that



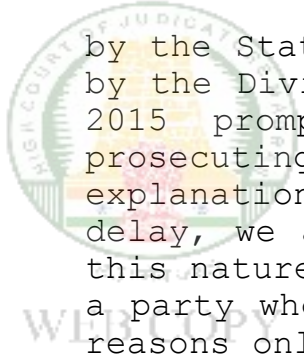
the said amount shall be recovered by the State from the ninth respondent in the writ petition, the present appellant in the accompanying appeal.

4.It appears that the official respondents 1 to 5 in the writ petition have preferred Writ Appeal(MD)No.1222 of 2015 and that writ appeal was decided on merits on 02.12.2015 holding that the order passed by the learned single Judge did not merit any interference. However, as could only be expected, the Division Bench towards the end of paragraph 10 of the judgment, observed that if the ninth respondent in the writ petition comes up with an independent appeal against that portion of the order of the learned single Judge which directed the compensation amount to be recovered from her, the said appeal will be examined independently without holding the dismissal of the Writ Appeal(MD)No.1222 of 2015 against her.

5.It is also apt to notice that the State Government which filed Writ Appeal(MD)No.1222 of 2015 has impleaded the present appellant as fifth respondent to the writ appeal. Thus, the appellant is aware of the direction issued by the learned single Judge ordering for recovery of the compensation amount of Rs.3 lakhs from the appellant herein. Possibly, the appellant herein may also have been aware that the State and other official respondents to the writ petition have preferred an appeal and that appeal has failed on 02.12.2015. It is only appropriate for us to notice that the appellant herein has placed reliance upon the observations made by the Division Bench towards the end of paragraph 10 of the judgment in support of the plea for condonation of delay now and hence, it is very clear that the appellant is aware of the judgment rendered by the Division Bench on 02.12.2015. In a quick time thereafter, the appellant has not moved the accompanying appeal but took more than 7 months after the dismissal of the Writ Appeal(MD)No.1222 of 2015 by the Division Bench and the accompanying appeal has been preferred only on 10.06.2016.

6.In the accompanying affidavit filed in support of this application, the factum of preferring Writ Appeal(MD)No.1222 of 2015 and that portion of the judgment in paragraph 10 has been relied upon. Beyond that there was not even a whisper of an explanation by the appellant as to why she has not preferred an appeal immediately at least after the decision rendered by this Court in Writ Appeal (MD)No.1222 of 2015 and as to what factors have come in the way of the appellant in preferring the accompanying appeal after the decision was rendered by the Division Bench in the said writ appeal. It is, therefore, very clear to us that the appellant was not diligent in prosecuting the legal remedy available to her.

7.It is a pity that it has been alleged that there was professional negligence on the part of the appellant in rendering service in Government Hospital, Palani, Dindigul District which resulted in the death of the child of the writ petitioner. It is a further pity that the appellant has not evinced any interest either to contest the case set up by the writ petitioner or prefer an independent appeal along with the appeal said to have been preferred



by the State or at least avail the benefit of the observations made by the Division Bench in its judgment rendered in W.A(MD)No.1222 of 2015 promptly. The negligence exhibited by the appellant in prosecuting the accompanying appeal is writ large. Since there is no explanation worth the acceptance for condonation of such a huge delay, we are not inclined to exercise our discretion in a case of this nature. Though we are conscious of the principle that normally, a party who is seeking a legal remedy should not be thrown out for reasons only of delay in approaching the Court, but however, equally important principle to be borne in mind is that the litigants who are not diligent cannot be permitted to be encouraged to litigate at their convenience. Hence, the application for condonation of delay of 1153 days is dismissed for lack of bona fides. Consequently, the accompanying appeal is also rejected.

sd/-

12/07/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE HEALTH SECRETARY,
HEALTH DEPARTMENT, ST. GEORGE FORT, CHENNAI-09.
- 3 THE DIRECTOR OF MEDICAL & RURAL, HEALTH SERVICES, CHENNAI-06.
- 4 THE JOINT DIRECTOR OF HEALTH SERVICES,
DINDIGUL DISTRICT, DINDIGUL.
- 5 THE MEDICAL OFFICER, THE GOVERNMENT HOSPITAL, PALANI
- 6 THE SPEICAL OFFICER,
CHIEF MINISTERS SPECIAL CELL,
ST. GEORGE FORT, CHENNAI-09.

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ORDER
IN
CMP(MD) No.6050 of 2016
IN
WA(MD) No.SR21937 of 2016
Date :12/07/2016