

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved: 13.04.2017

Orders Pronounced : 08.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No. 1369 of 2017

1. Thilagam

2. Murugesan

... Petitioners

vs.

Dr. S. Mohan

... Respondent

Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 11.01.2017 made in I.A. No.92 of 2015 in Unnumbered A.S.No. nil of 2015 (CFR No.7885/15) on the file of learned Principal Sub Court, Erode and prays to set aside the same.

For Petitioners : Mr. K.A. Vimal Kumar

ORDER

This Civil Revision Petition arises against the fair and decreetal

order dated 11.01.2017 made in I.A. No.92 of 2015 in Unnumbered A.S.No. Nil of 2015 (CFR No.7885/15) on the file of learned Principal Sub Court, Erode.

2. Brief facts of the case is as follows :-

The respondent herein has filed a suit in O.S. No. 717 of 2009, for Declaration, Mandatory Injunction and for permanent injunction. The Principal District Munsif, Erode passed a decree on 09.04.2011. The petitioners engaged a counsel by name Mr. E.P. Mohan, to appear on behalf of them to conduct the above case. The petitioner and his wife signed the necessary forms to file an appeal, against the decree. Subsequently, the petitioner was informed by the counsel that the appeal has already been filed and the same is pending for adjudication. When that being the position, the petitioners receive notice in the execution proceedings in E.P. No. 52/2011, filed by the respondent herein, to execute the decree passed in the above said suit, O.S. No. 717 of 2009. The said notice was also entrusted to the then counsel Mr. E.P. Mohan and he assured that he would inform the petitioners as soon as he prepares the appeal suit. The petitioners bonafidely believed the information given by the counsel that the appeal suit is pending for adjudication. Again, the

petitioners received a communication dated 05.04.2015, from an Advocate Commissioner. The said communication was informed to the then counsel and the petitioners enquired about the status of the appeal filed. The counsel gave the same reply that the appeal is pending before the Appellate Court. Since the petitioner was not satisfied with the reply of the said counsel, the petitioners approached the present counsel and requested him to ascertain whether any appeal is filed before the Appellate Court. Only then, the petitioners came to know the fact that no such appeal has been filed by the previous counsel. Further, it was found that the petitioners have been set ex-parte in the aforesaid E.P. No.52 of 2011. After coming to know the aforesaid facts, the petitioners received the case papers from the then counsel and engaged the present counsel to prosecute the appeal suit, on behalf of the petitioners, before the Appellate Court. Therefore, there is a delay of 1437 days in filing the appeal. But the Lower Appellate Court, without considering the aforesaid bonafide reasons, has erroneously dismissed the application in I.A. No.92 of 2015, for condoning the delay. Aggrieved by the said order, the petitioners have filed this revision before this Court.

3. Heard the submissions made by the learned counsel for the

petitioners and perused the material available on records.

4. It is seen from the facts of the case that the respondent has filed the suit in O.S. No. 717 of 2009 and a decree has been passed on 09.04.2011. On receipt of the judgment and decree passed by the Trial Court, the petitioners had entrusted the appeal papers to the their counsel Mr. E.P. Mohan, for preferring an appeal against the judgment and decree dated 09.04.2011. The petitioners had bonafidely believed the information given by the then counsel that the appeal suit has been filed and the same is pending for adjudication. On 05.04.2015, when the Advocate Commissioner came to the subject property. Thereafter, the petitioners found that no appeal suit has been filed. Hence, the entire case papers were received from the then counsel and entrusted to the present counsel to file the appeal suit, along with the condone delay application.

5. On perusal of the order passed by the Lower Appellate Court, it is found that the contention of the petitioners have been rejected for the reason that the petitioners have not adduced any documentary evidence to substantiate the averments made in the affidavit. Further, the petitioners have not given any particulars to show the sufficient cause for the inordinate delay of 1437 days. The petitioners have not placed any

materials before the court below with regard to the allegations made against the said counsel.

6. In support of his contention, learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in ***H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER***, reported in **(2015) 1 SCC 680**, wherein it is held as follows:

" 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for

specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.”

7. In the case on hand, the petitioners have not furnished the particulars for the averments made in the affidavit and the sufficient cause to condone the delay. When the petitioners make a serious allegation against a counsel, the petitioners have to file necessary documents to prove the allegation that there is gross negligence on the part of the counsel for causing inordinate delay in filing the appeal suit. It is seen from the records that the petitioner has received a communication in the execution proceedings and has also received a communication dated 05.04.2015 from the Advocate Commissioner stating that he has been appointed as an Advocate Commissioner in E.P. No. 52 of 2011. The Interim Application has been filed on 29.06.2015. Hence, it is clear from the facts that even after receipt of the notice in the execution proceedings and the notice received from the Advocate Commissioner, immediately the petitioner has neither filed any appeal nor has shown any evidence or

proof, for the inordinate delay in preferring the appeal suit. Therefore, there is no error or illegality in the order passed by the Principal Subordinate Judge, Erode and so this Court is not inclined to entertain this Revision.

8. Accordingly, the Civil Revision Petition fails and the same is dismissed. No order as to costs.

08.06.2017

Index : yes / no

Speaking Order/ Non speaking order

avr

To

The Principal Sub Court,
Erode

D.KRISHNAKUMAR, J.

avr

C.R.P. (NPD) No. 1369 of 2017

08.06.2017

**Pre-delivery order
in**

C.R.P.(NPD) No.1369 of 2017

To

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Respectfully submitted

C.R. Asha Viji Rani
P.A. to Hon'ble Judges