

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM

THE HONOURABLE MS.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (NPD) No.3835 of 2014

Manikandan

... Petitioner

..Vs..

Murugan

... Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the order of the Hon'ble Subordinate Judge at Gingee, dated 16.06.2014 in I.A.No.814 of 2014 in M.C.O.P.No.175 of 2008.

For petitioner : Mr.K.Sathyaraj
For Respondent : Mr.R.Thanjan

ORDER

Challenging the order of the learned Subordinate Judge at Gingee, dated 16.06.2014 in I.A.No.814 of 2014 in M.C.O.P.No.175 of 2008, the present revision petition has been filed.

2. The petitioner has filed the M.C.O.P.No.175 of 2008 before the Subordinate Court at Gingee. The aforesaid M.C.O.P was dismissed on 21.02.2012 for non-appearance of the petitioner. The petitioner has filed an

application under Order 9 Rule 9 in I.A.No.814 of 2014 in M.C.O.P.No.175/2008 before the said court along with the an application to condone the delay of 718 days under Section 5 of the Limitation Act. The respondent herein filed the counter affidavit denying the averments made in I.A.No.814/2013. On consideration of the said I.A., the Subordinate Judge, Chengi, dismissed the said petition. Against which, the petitioner has filed the Civil Revision Petition before this Court.

3. According to the learned counsel for the petitioner, the petitioner met with an accident on 21.01.2008 and sustained fracture on his left side thigh and multiple injuries all over the body. He filed M.C.O.P.No.175/2008 for compensation of Rs.10,00,000/- with costs. The said O.P was dismissed for non-prosecution. Thereafter, the petitioner has filed the application in I.A.No.814 of 2014 stating sufficient reasons for the non-appearance on the hearing date. However, without considering the bonafide reasons, the tribunal dismissed the said application. The learned counsel thus sought this court that the order passed by the tribunal may be set aside.

4. Per contra, the learned counsel for the respondent would submit that the petitioner has filed the application without explaining the inordinate delay in filing the application. The tribunal has considered the reasons stated in the affidavit and dismissed the application by stating that there is no bonafide

reasons in the affidavit, to condone the inordinate delay. Further, the petitioner has not adduced any oral or documentary evidence to prove the reasons for inordinate delay and hence, the application has been rightly dismissed.

5. I have considering the rival submissions made by the learned counsel for the parties. It is seen that the petitioner filed M.C.O.P for compensation for sum of Rs.10,00,000/- against the respondent herein. The said M.C.O.P was dismissed on 21.12.2012, and therefore, the application in I.A.No.814 of 2014 has been filed by the petitioner to restore the said M.C.O.P. Along with the said application under Order 9 Rule 9, the petitioner also filed an application, to condone the delay. In the affidavit filed in support of the said I.A., the petitioner has stated that he was not able to attend on the hearing date for the reasons that the petitioner could not contact the counsel due to his treatment for the accident occurred and thereafter he recovered from his injuries, he came to know that the M.C.O.P., filed by him has been dismissed.

6. On a perusal of the order, it is found that the petitioner has not produced any evidence by way of oral and documentary evidence in support of his reasons stated in the said application. Even this Court has given several opportunity to produce materials in support of the reasons stated in the affidavit, and the matter has been adjourned for producing such materials before this court at the request of the petitioner. The petitioner is not in a position to

produce the documents before this Court to substantiate his delay in filing the application. Therefore, in the present case, on the basis of the available materials, the petitioner has not produced any documentary evidence to explain the sufficient cause for inordinate delay in filing application to restore the O.P. The petitioner has not even entered the witness box once and stated the reasons to condone the inordinate delay. Further, in the affidavit filed in support of the present petition, the petitioner has not shown sufficient reasons either for condoning the inordinate delay nor produced any particulars in the application to restore the M.C.O.P. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.

7. In view of the above facts, there is no error or illegality in the order passed by the court below. Hence, this Civil Revision Petition is dismissed. No order as to costs.

13.04.2017

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To

The Subordinate Judge, Gingee

D.KRISHNAKUMAR,J.,

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