

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.22 of 2011

Pandurangan

.. Petitioner

Vs.

1.The District Forest Officer,
Villupuram.

2.Mohanasundaram

3.Arumugam

4.Kuppan

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C.,
against the Fair and Decreetal Order dated 05.04.2010 made in
I.A.No.82 of 2008 in A.S.No.Nil of 2008 on the file of the Principal
District Court, Villupuram.

For Petitioner : Ms.P.T.Asha
for M/s.Sarvabhauman Associates

For Respondents : No Appearance

ORDER

The petitioner herein is the plaintiff in O.S.No.169 of 2000 on the file of the learned Principal District Munsif Court, Thirukoviloor and he filed the suit for the relief of Permanent Injunction against the respondent herein in respect of suit schedule property.

2.The said suit came to be dismissed by the Trial Court vide Decree and Judgment dated 28.11.2001. Aggrieved over the dismissal of suit, the petitioner filed an appeal before the Principal District Judge, Villupuram District on 01.07.2002. As the appeal papers originally presented by the revision petitioner, suffered some defects, hence the Lower Appellate Court returned the Memorandum of Appeal on 20.07.2002 with direction to rectify the indicated defects.

3.Subsequently rectifying the defects the appeal papers were represented on 30.07.2002. Petitioner's memorandum of appeal came to be returned on 27.09.2002 again by citing certain defects.

4.According to the revision petitioner the returned appeal papers got mixed up with other papers in his counsel's office and thereafter the bundle was traced out only on 09.03.08 after deep search over his

counsel's office for several times. Therefore the appeal was able to be represented before the Lower Appellate Court with delay of 1981 days accompanied with an application under section 5 of the Limitation Act.

5.The trial Court holding that the reason assigned is not convincing and unacceptable thereby dismissed petitioner's application filed under Section 5 of Limitation Act. The said order is under challenge in this Civil Revision petition.

6.I heard Ms.P.T.Asha, learned counsel appearing for the petitioner and perused the entire materials available on record. No representation on behalf of respondents.

7.On perusal of records, it is seen that the revision petitioner's Memorandum of appeal is being presented before the Lower Appellate Court on various occasion and as the memorandum of appeal remained returned by the Court below citing certain defects.

8.It is needless to say that it is duty of the counsel to rectify the defects and comply with instruction indicated at return. No doubt that for the fault of counsel a litigant cannot be deprived of his valuable

right of appeal provided under Statute. If the appeal suit itself is filed with a delay of 1981 days, decision of this Court will be otherwise dismissing the delay condonation application, whereas the case on hand involves delay in representation.

9. Therefore, I am of the view that the petitioner's case requires liberal approach providing him an opportunity to peruse the appeal remedy, however on terms as to cost.

10. In the result, this Civil Revision Petition allowed on condition that the petitioner shall pay a sum of Rs.10,000/- as cost to the Resident Medical Officer, Government Infectious Diseases Hospital, Thoppur, (Madurai-Virudhunagar Road), Madurai District within a period of three weeks from the date of receipt of a copy of this order. The Trial Court is directed to number the set aside application and dispose the same within a period of two months thereafter.

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vs
Internet: Yes
Index: Yes
Note: Issue order copy on 23.01.2019
To
The Principal District Court, Villupuram.

M.V.MURALIDARAN, J.

VS



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