

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

CRP (NPD)Nos.4181 of 2011

Dr.A.Shankar

.. Petitioner

Vs.

1.S.Jagadevan

2.Salem City Municipal Corporation

Rep. by its Commissioner,

Having office at Salem City Municipal Corporation,

Salem – 636 002.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC against the fair and decretal order dated 04.02.2011 made in I.A.No.75 of 2009 in unnumbered appeal suit No...../2009 on the file of Principal Subordinate Court, Salem.

For Petitioner : Mr.R.Govindaraj

For Respondents : Mr.P.Raja [for R1]
R2-No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 04.02.2011 made in I.A.No.75 of 2009 in unnumbered appeal suit on the file of Principal Subordinate Court, Salem.

2. The petitioner is the plaintiff and defendants are the respondents in the suit in O.S.No.197 of 2003 on the file of the District Munsif Court,

Salem. The suit was filed by the petitioner against the first respondent for a permanent injunction restraining the respondents from putting up any further construction in the suit mentioned property and for a mandatory injunction to remove the construction already put up by the first respondent within the time fixed by the Court.

3. The first respondent filed written statement and contested the suit. After contest, the suit was partly decreed vide order 0.02.20016 granting relief of permanent injunction, but however dismissed the relief of mandatory injunction. Against the said judgment, the petitioner filed an appeal (which remains unnumbered) along with application in I.A.No.75 of 2009 for condoning the delay of 1231 days in filing the appeal.

4. According to the petitioner, subsequent to the judgment and decree dated 06.2.2006, there was a panchayat in respect of the suit lane. The first respondent has given assurance that he would not put up any further construction in the suit land and it was also decided before the Panchayat that both the petitioner and the first respondent should not file any appeal with regard to the said suit. It is contended that contrary to the said agreement, the first respondent has put up construction on 26.6.2009. Further, it is contended by the petitioner that when he approached the first respondent questioning him with regard to the alleged construction in the suit lane, which is against the agreed terms before the Panchayat, it is stated by the first respondent that since three years had passed after delivering the decree in the suit, and that the

petitioner would not be in a position to prefer an appeal at this stage to raise his plea before the Court. Hence, the petitioner left with no other option decided to prefer an appeal and filed an application in I.A.No.75 of 2009 to condone the delay of 1231 days, in the said unnumbered appeal.

5. The respondents filed counter and denied that there was no panchayat as alleged by the petitioner and the reason given by the petitioner is not a valid reason to condone the delay.

6. Before the learned Judge, the petitioner was examined as P.W.1. It appears that no document was filed on behalf of the parties. The learned Judge considering the evidence of the petitioner, P.W.1, and his brother, P.W.2, dismissed the application vide order dated 04.2.2011, taking note of the fact that since there was no proof on the petitioner's side to prove that panchayat was held on 07.03.2006, and thus the contention of the petitioner was not acceptable by the court. The application filed under Section 5 of the Limitation Act must satisfy the Court that there was a sufficient cause for not making the application within the prescribed period. But, in the said case, there was no proper reason given to condone the delay.

7. Against the said order of dismissal, the petitioner has filed the present civil revision petition.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the

materials available on record.

9. The petitioner has contended that there was an agreement in the year 2009 between the petitioner and the first respondent that they both should not prefer an appeal in the said suit before the Panchayat and that there was assurance given the first respondent that he would not put up any further construction in the suit lane. According to him, the first respondent failed in his promise and proceeded with further construction in the suit lane, which is against the compromise that was entered between them. In the said circumstances the petitioner preferred an appeal, thereby filing an application to condone the delay of 1231 days in filing the appeal.

10. From the records it is seen that the petitioner did not produce any evidence to substantiate his contention. During trial, the petitioner was examined as P.W.1 and his brother was examined as P.W.2. The evidence of P.W.1 is that the panchayat was held on 07.3.2006 and his brother and brother's uncle had attended the panchayat. On the other hand, P.W.2, the brother of the petitioner, had deposed that he and his uncle went to the house of the first respondent in the year 2009 to meet him, but the first respondent did not allow them inside the house and without responding to them answered in negative. Thus, the submissions of evidences are found contrary to each other and hence it was not acceptable by the trial Court. The trial Court in its judgment has held that as alleged by the petitioner, if the respondents are attempting to put any construction in the suit lane, the petitioner is entitled to get a relief before

the Court, based on the new cause of action, but whereas, the reasons stated by the petitioner in filing the application to condone the delay in preferring the appeal is not sufficient and it is not acceptable. The learned Principal Subordinate Judge, Salem finds no merit in the application filed by the petitioner and hence dismissed the same.

11. It is well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties were given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In view of the well settled principle, there is no irregularity or illegality in the order passed by the learned trial Judge warranting interference by this Court.

12. In the result, the civil revision petition is dismissed. No costs.

ds

WEB COPY

04.07.2017

Speaking order/Non-speaking order

Internet : Yes / No

Index : Yes/No

To:

The Principal Sub Judge,
Salem.

V.M.VELUMANI, J.

ds



CRP (PD)No.4181 of 2011

WEB COPY

04.07.2011