

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No. 2076 of 2013

P.Arumugam

...Petitioner

Vs

E.Saroja

...Respondent

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code as against the fair and final order dated 06.02.2013 made in I.A.No.83 of 2012 in A.S.C.F.R.No.8293 of 2012, on the file of the Principal District Court, Tiruppur.

For Petitioner	: Mr.J.Franklin
For Respondent	: No appearance

ORDER

The interlocutory application filed by the petitioner to condone the delay of 185 days in presenting the first appeal was dismissed by the learned Principal District Judge, Tiruppur. The order is under challenge in this civil revision petition.

2. Heard the learned counsel for the petitioner. None appeared on behalf of the respondent.

3. The respondent filed the suit in O.S.No.690 of 1999 before the Subordinate Court, Tiruppur praying for a decree for specific performance of the agreement dated 07 April 1998. Since the petitioner was called absent, the learned trial Judge decreed the suit.

4. The petitioner filed a statutory appeal before the Principal District Court, Tiruppur, along with an interlocutory application in I.A.No.83 of 2012 to condone the delay of 185 days.

5. Before the first appellate Court, the petitioner contended that he was suffering from jaundice and native treatment was taken at Palakad, Kerala. According to the petitioner, on account of the treatment, he could not file the appeal within the statutory period. The petitioner, therefore, made a request to condone the delay of 185 days in presenting the appeal.

6. The learned District Judge, wanted the petitioner to explain each day's delay. According to the learned Judge, the petitioner has not given particulars with regard to the commencement of his treatment and the date of recovery. In short, failure on the part of the petitioner to give particulars of the treatment taken at Palakad, made the learned District Judge dismiss the application.

7. The suit is one for specific performance. There is nothing on record to indicate that the suit was disposed of on merits. The trial Court decreed the suit on account of the non appearance of the petitioner. The first appellate Court dismissed the application only on the ground that the treatment particulars were not given properly. In a matter of this nature, the Court should not approach the issue with a notion that there are no *bona fides* in the application. It is true that the petitioner has not given details of his treatment and the time taken for recovery. However, there is indication that he was taking native treatment for jaundice. The learned District Judge was too technical and the same is reflected in the order impugned in this civil revision petition. In view of the background facts and the reasons given by the petitioner, I am of the view that the first appellate Court was not correct in dismissing the application.

8. In the result, the order dated 06 February 2013 is set aside. The application in I.A.No.83 of 2012 is allowed. The learned Principal District Judge, Tiruppur is directed to number the first appeal filed against the judgment and decree in O.S.No.690 of 1999 on the file of the Subordinate Judge, Tiruppur and dispose of the same as expeditiously as possible.

The civil revision petition is allowed as indicated above. No costs.

03.04.2017

K.K.SASIDHARAN,J.

Gms

To

The Principal District Court, Tiruppur.

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