

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.06.2017**

CORAM:

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

C.R.P.(N.P.D.) No.2120 of 2013 and

M.P.No.1 of 2013

Pazhanivel

... Petitioner

Vs

Ramachandran

... Respondent

Prayer:- Civil Revision Petition filed under Article 115 of the Civil Procedure Code, against the order and decretal order dated 01.11.2011, IA.No.104 of 2011 in Unfiled appeal No.104 of 2011, on the file of the Subordinate Court at Nagapattinam.

For Petitioner : M/s.Bhagavath

For Respondent : M/s.M.Govindaraju Ganesh Venugopal

ORDER

The respondent filed a suit for injunction against the petitioner in O.S.No.331 of 2004 before the learned Munsif, Nagapattinam. The suit was contested by the petitioner by filing written statement. The Trial Court passed a judgment and decree dated 13 December 2007.

2. The petitioner filed appeal before the Sub-ordinate Court,

Nagapattinam along with an application to condone the delay of 1261 days in preferring the appeal. The application was dismissed by the Trial Court. The said order is under challenge in this Civil Revision Petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The suit filed by the respondent was decreed by the Trial Court by judgment and decree dated 13 December 2007. The petitioner failed to file the appeal within the statutory period.

5. The petitioner filed an application in I.A.No.104 of 2011, before the appellate Court to condone the delay, in preferring the appeal. In the affidavit filed in support of the said application, the petitioner submitted that as he was unwell and he could not meet his counsel for the purpose of preferring the appeal, before the First Appellate Court. The respondent filed a counter, wherein, it was contended that only after entering appearance in the execution petition in E.P.No.28 of 2011 on 28.03.2010, the petitioner filed the appeal along with the application to condone the delay.

6. The learned Trial Judge considered the said contention and made an observation that it was an incorrect submission. The Execution Petition in E.P.No.28 was filed only in the year 2011. Therefore, there was no question of entering appearance by the petitioner in the said Execution Petition on 28

March 2010. Even after rejecting the contention taken by the respondent, the learned Sub-ordinate Judge dismissed the application filed by the petitioner on the ground that he has not given details about his illness, treatment taken and other material particulars for the purpose of condoning delay.

5. It is true that the affidavit filed by the petitioner is bereft of details. The petitioner ought to have given details with regard to the nature of illness, the treatment taken by him and the period of treatment. No such particulars were mentioned in the affidavit filed in support of the application.

6. The Trial Court has already rejected the contentions taken by the respondent in the counter affidavit filed in I.A.No.104 of 2011. Under such circumstances, the Trial Court ought to have given reasonable opportunity to the petitioner to file a better affidavit indicating the reason for the delay. It is more so, on account of the fact that incorrect details were given by the respondent before the First appellate Court. In view of the same, I deem it fit to grant an opportunity to the petitioner to file a better affidavit before the First Appellate Court, for the purpose of deciding the application in I.A.No.104 of 2011.

K.K.SASIDHARAN,J.

si/arr

7. In the result, the order dated 1 November 2011, is set aside. The interlocutory application in I.A.No.104 of 2011 is restored to file. The petitioner is permitted to file a better affidavit indicating the actual reasons for the delay. The respondent should be given liberty to file his counter taking into account of the affidavit filed by the petitioner. The learned Subordinate Judge, Nagapattinam is directed to consider the interlocutory application in I.A.No.104 of 2011 on merits and pass appropriate orders as expeditiously as possible.

8. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2017

Index: Yes/No
si/arr

To

The Subordinate Court,
Nagapattinam.

C.R.P.(N.P.D.) No.2120 of 2013