

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3220 of 2009

Ansari

.. Petitioner

Vs.

1. Sowgath
2. Mohammed Ali
3. Hamanullah
4. Jyaudeen
5. Ameeth
6. Moideen Meera Sha
7. Habibu Rahman
8. Ahmed Nisa
9. M.Jaffer Ali
- 10.M.Ibrahim
- 11.M.Sathik Basha
- 12.Mohammed Rabee
- 13.Jameela Beevi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 03.07.2009 passed by the learned Subordinate Judge, Madurantakkam, dismissing I.A.No.165 of 2008 in A.S.S.R.No.3162 of 2008.

For Petitioner : Mr.Nagu Sah
For RR1 to 4 : No appearance
R5 : Mr.Mohamed Ehiya
R6 : Died
R7 to 10 & 12: No Appearance
R11 & 13 : Not ready in notice

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 03.07.2009 passed by the learned Subordinate Judge, Madurantakkam, dismissing I.A.No.165 of 2008 in A.S.S.R.No.3162 of 2008.

2. The petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.415 of 1998 on the file of the District Munsif Court, Madurantakam. The petitioner filed above suit for permanent injunction restraining the defendants 1 to 5 from cutting the casuarina trees in the suit property.

3. The suit filed by the petitioner was dismissed by the judgment and decree dated 09.11.2005 after contest. The petitioner filed an appeal along with I.A.No.165 of 2008 to condone the delay of 987 days in filing the appeal. According to the petitioner, the counsel who appeared for him in the trial court did not inform him

about the result of the said suit and didn't send the decree passed in O.S.No.415 of 1998. The petitioner was suffering from jaundice and took country treatment and hence he could not contact his advocate. Only when the respondents came to cut the trees, the petitioner came to know that the suit filed by him was dismissed on 09.11.2005. After obtaining the judgment and decree from the counsel, he filed appeal along with the present I.A. for condonation of delay.

4. The respondents 1 to 5 filed counter and opposed the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and taking into consideration the fact that the suit was dismissed on 09.11.2005 after contest, held that the petitioner ought to have taken diligent steps to proceed with the case by contacting his advocate. Failure on the part of the petitioner to follow up the matter shows that he was not diligent enough to prosecute his case and hence, the learned Judge dismissed the application.

6. Against the order of dismissal dated 03.07.2009 made in I.A.No.165 of 2008, the present CRP is filed.

7. Heard the learned counsel for the petitioner and the learned counsel for the 5th respondent and perused the materials available on record.

8. The petitioner filed the said suit for permanent injunction and the suit was dismissed by judgment and decree dated 09.11.2005 after contest. Thereafter, the petitioner filed an appeal along with I.A.No.165 of 2008 to condone the delay of 987 days in filing the appeal. Since the petitioner was suffering from jaundice and took country treatment, he could not contact his advocate. Therefore, there was delay of 987 days in filing the appeal.

9. It is well settled that application for condonation of delay must be considered liberally and the length of delay is not the criteria. At the same time, it is also well settled that the intention of the party must be bona-fide and it should not be mala-fide. The party must give valid and acceptable reasons for condonation of delay. The reasons given by the petitioner are not acceptable to

condone the delay in this case.

10. The learned Judge, considering all the above facts in proper perspective, dismissed the application by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court in the impugned order of the learned trial Judge, dated 03.07.2009.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.07.2017

Speaking Order/Non-speaking Order
Index :Yes/No
pvs

To

The Subordinate Judge,
Madurantakkam

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V.M.VELUMANI, J.

pvs



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