

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD) No.3179 of 2008
and
M.P.No.1 of 2008**

Mr.Gali Simhachalam

.. Petitioner

Vs.

1.M.Chandrasekar

2.M.Lakshmi Devi

3.M.V.Munirathinam Naidu

4.M.Sakkubai

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair Order and Decretal Order in I.A.No.119 of 2006 in A.S.No.66 of 2001, dated 19.06.2008, on the file of the Subordinate Judge, Thiruvallur.

For Petitioner : Mr.M.Subbarayalu

For Respondents : Mr.G.Poonkundran (for R1 and R2)

R3 and R4 -Died, vide order dated 13.03.2013

ORDER

Heard Mr.M.Subbarayalu, learned counsel appearing on behalf of the Revision Petitioner and Mr.G.Poonkundran, learned counsel appearing on behalf of the respondents 1 and 2.

2.The respondents herein has filed a suit in O.S.No.1286 of 1987 before the learned District Munsif Court at Tiruttani, against the Revision Petitioner praying for a relief of declaration, declaring that the respondents/plaintiffs are the owners of the suit property and put the plaintiffs in a possession of the suit property. That the said suit was decreed and aggrieved by the same, the Revision Petitioner has filed in A.S.No.66 of 2001 before the learned Subordinate Judge, Thiruvallur. It could be seen that the said Appeal was dismissed on 03.06.2003 for default and after a delay of almost 1155 days, the Revision Petitioner has preferred an Application under Section 5 of the Limitation Act r/w Order 41 Rule 19 of C.P.C for Readmission of the Appeal and it was resisted by the respondent stating that it is the duty of the Revision Petitioner to ensure that the Appeal is filed in time and also to ensure that in the event of a dismissal of an Appeal, the matter is pursued vigorously and cautiously. The said I.A.No.119 of 2006 was heard by the learned Subordinate Judge at Thiruvallur and by an Order dated 11.06.2008, the same was dismissed by

holding that it is the duty of the parties to follow up the progress of a case and it is unacceptable to blame the Advocate for the same. Aggrieved by the same, the present Revision Petition has been filed.

3. In support of his contention, Mr. M. Subbarayalu, in substantiating the delay of 1155 days in filing the Application for setting aside, would rely upon the decisions of the Hon'ble Supreme Court in ***N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123, Indian Oil Corporation Ltd. & Others V. Subrata Borah Chowlek, etc., 2011-1-L.W.385, Commissioner of Customs & Central Excise v. Hongo India (P) Ltd. & Another, 2009 (4) CTC 390,*** Division Bench judgment of this Court in ***N. P. Srinivasan v. S. Santhalakshmi, 2013 (3) CTC 220 and M/s. Fast Cool Services by partners 1. Radhamohan, 2. Shankar Vs. Shanthakumari, 2000-2-L.W.642*** to canvass the point that the Courts generally adopt a liberal view under Section 5 of the Limitation Act, in condoning the delay and hence the Court below ought to have condoned the delay.

4. Mr. Poonkundan, learned counsel for the respondents 1 and 2 would rely upon a recent judgment of the Hon'ble Supreme Court in ***H. Dohil Constructions Company Pvt. Ltd., v. Nahar Exports Ltd.,***

reported in **2015(5) CTC 534** wherein it has been held as follows:

"21. ... The Principle that the Law of Limitation is based on sound Public Policy and therefore, in the absence of bonafide the Applications for condonation of delay should be strictly construed assumes significance.

23. ... As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to re-filing."

5.Now, the question that arises for consideration of this Court revolves around a narrow compass as to whether the delay of 1155 days has to be condoned or not? It could be clearly seen that the Hon'ble Supreme Court, in its recent judgment in **2015 (5) CTC 534** has categorically stated that in the guise of liberal approach, the Courts ought not to allow the applications for condone delay even in matters pertaining to refiling if the reasons are not bonofide.

6.The Revision Petitioner though, relying upon several judgments has submitted that the Court has to be liberal in condoning

the delay, there is no sufficient cause that has been properly explained and the reasons given by the Revision Petitioner has not been accepted by the Court below. The Court below while dismissing the I.A.No.119 of 2006 has very clearly taken into account the conduct of the petitioner and held that the reasons afforded are not satisfactory and accordingly dismissed the I.A.No.119 of 2006.

7.As it has already been stated that the Hon'ble Supreme Court in its recent decision in **2015(5) CTC 534** has held that a liberal approach cannot be made in all cases of delay and there must be bonofide reasons to condone the delay and that the Revision Petitioner has not made out convincing reasons for interference in the order passed by the learned Appellate Court in I.A.No.119 of 2006 as there is no proper reason for the delay of 1155 days, this Court is not convinced with the submissions made by the learned counsel for the petitioner and is unable to find any infirmity in the order passed by the Court below. For the reasons stated above, the instant Civil Revision Petition fails.

8.In the result, the above Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.09.2017

Index:Yes
Internet:Yes

vs

To
The Subordinate Judge,
Tiruvallur.



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M.V.MURALIDARAN, J.
vs



**Pre-Delivery Order made in
C.R.P.(PD)No.3179 of 2008
and
M.P.No.1 of 2008**

05.09.2017

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C.R.P.(PD).No.3179 of 2008

M.V.MURALIDARAN, J.

Today, the matter is listed under the caption "for being mentioned" at the instance of learned counsel for petitioner.

2. It is represented by the learned counsel for the petitioner that the matter has already been dismissed by this Court by order dated 05.09.2017. In the said order, the name of the counsel for the petitioner has been wrongly typed as M.Subbarayalu instead of Mr.Udhayakumar, in the appearance portion of the order. Hence, it may be read as Mr.Udhayakumar, counsel for the petitioner, wherever it appears as Mr.Subbarayalu, in the order dated 05.01.2017, learned counsel for the petitioner.

3. Registry is directed to carry out necessary correction and issue fresh order copy.

25.10.2017

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M.V.MURALIDARAN, J.

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C.R.P(NPD)No.3179 of 2008

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