

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2532 of 2012

1.Maragatham
2.Shanthipriya
3.K.Savithiri

... Petitioners

Vs

1.Kesavan
2.Saravanan
3.Latha
4.Gnanambal

... Respondents

(Cause title accepted vide order of Court
dated 4.7.2012 made in MP.No.1/2012
in CRP.SR.No.51837 of 2012)

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair and Final order dated 01.04.2011 passed in I.A.No.278 of 2010 in P.O.P.No.15 of 2000 on the file of the Principal Subordinate Court, Erode and District.

For Petitioners : Mr.I.C.Vasudevan

For Respondents : Mr.P.Valliappan (for R4)

No Appearance (for R1 to R3)

ORDER

The petitioner has filed this Civil Revision Petition challenging the Order of Dismissal of his application to condone the delay of 3256 days in representing I.A.No.278 of 2010 in POP.No.15 of 2000 dated 01.04.2011.

2.I heard Mr.I.C.Vasudevan, learned counsel for the petitioners and Mr.P.Valliappan, learned counsel for the 4th respondent and perused the entire materials available on record. No representation on behalf of the respondents 1 to 3.

3.On perusal of records discloses that the revision petitioner filed Pauper Original Petition No.15 of 2000 before the Principle Sub-Court, Erode. The said petition was dismissed for default on 16.02.2001 as the petitioner has not paid the Court fees as agreed by him. Subsequently, the petitioner has filed an application to restore the POP.No.15 of 2000 which was dismissed for default and the said application was returned for certain defects to be rectified on 16.03.2001.

4.It is the contention of the Learned Counsel for the revision petitioner that after the said return was made, he was suffering from hypertension from March 2001 and was bedridden for 6 months. So, according to the petitioner, because of the illness he could not contact his counsel and further the returned papers were also got mixed up with other case bundle in his counsel's office. Therefore the returned papers could not be represented in time and there is a delay of 3256 days in representing the returned application.

5.Per contra, the learned counsel appearing for respondents submitted that the reason assigned by the petitioner cannot be accepted and the said reason is an usual one and hence he prayed to dismiss the Civil Revision Petition. According to the counsel for the respondents the delay is inordinate and therefore the trial Court has rightly dismissed the application which does not call for any interference by this Court.

6.Considering the rival submission on either side and also the decision cited by the learned counsel for the respondents reported in 2015 (3) MWN (Civil) & 2011 (2) MWN (civil) 741, this Court is of the view that though the delay is inordinate one and the reason signed in

the affidavit for the delay of 3256 days in representing the petition filed to restore the Pauper OP is not sufficient, to render substantial to the parties an opportunity could be given to the revision petitioner, provided on terms of heavy cost.

7. Admittedly, in the case on hand the petitioner has represented the restoration petition with the delay of 3256 days. Though this Court is unable to accept the reason attributed for the huge delay, considering the fact that it is not the case of delay in filing, it is only an application of representation and therefore no rigid and harsh Principle to be applied in condoning the delay in representation. However, at the same time this Court is able to visualize the mind of the respondents who suffered mental harassment because of the prolong litigation. Considering the overall aspect of the case, this Court is of the opinion that the delay could be condoned on heavy terms, so that the parties to litigants would realize the impact of their case. Therefore, this Court in the interest of justice, equity and fair play thought it fit to condone the delay of 3256 days in representing the petition filed in I.A.No.278 of 2010.

8.In the result:

(a) this Civil Revision petition is allowed, by setting aside the order passed in I.A.No.278 of 2010 in P.O.P.No.15 of 2000, dated 01.04.2011, on the file of the learned Principal Subordinate Court, Erode District, on condition that the petitioner should pay a sum of Rs.1,00,000/- (Rupees one lakh only) as costs, to the respondent, within a period of eight weeks from the date of receipt of a copy of this order;

(b) on production of the payment receipt, the learned trial Judge namely the Principal Subordinate Judge, Erode, taken the petition on file and dispose the same within a period of four months thereafter, by giving notice to both the parties.

24.04.2017

vs

Note:Issue order copy on 28.01.2019

Index : Yes

Internet : Yes

To

The Principal Subordinate Court,
Erode and District.

WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
CRP(NPD)No.2532 of 2012

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