

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3843 of 2010

M.P.No.1 of 2010

P.Subrayalu naidu
Petitioner

Vs.

1.Arikrishnan
2.Krishnamoorthy
3.Kaliyan
4.Ravi @ Ramadass

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 19.11.2009 passed in I.A.No.103 of 2009 in I.A.No.74 of 2008 in unnumbered A.S.No. Nil of 2008 on the file of the Principal Subordinate Judge, Puducherry.

For Petitioner : Mr.T.S.Baskaran

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 19.11.2009 passed in I.A.No.103 of 2009 in I.A.No.74 of 2008 in unnumbered A.S.No. Nil of 2008 on the file of the Principal Subordinate Judge, Puducherry.

2. The petitioner is defendant and respondents are plaintiffs in I.A.No.103 of 2009. The respondents filed I.A.No.103 of 2009 to set aside the order dated 17.03.2009 passed in I.A.No.74 of 2008 which was dismissed for non payment of cost. The respondents filed appeal against the judgment and decree dated 03.06.2008 made in O.S.No.789 of 1999, along with I.A.No.74 of 2008 to condone the delay of 5 days in filing the appeal. The said application was allowed on 26.02.2009, on condition that the respondents should pay a sum of Rs.250/- on or before 09.03.2009. The respondents did not pay the cost and application in I.A.No.74 of 2008 was dismissed for default on 17.03.2009.

3. The respondents filed I.A.No.103 of 2009 to set aside the order dated 17.03.2009 and to restore the I.A.No.74 of 2008. According to the respondents, the first respondent was looking after the case and he fell ill and could not contact his Advocate to pay the cost. The failure to pay the cost is neither wilful nor wanton.

4. The petitioner filed counter affidavit and opposed the said application stating that the respondents have not furnished any details to set aside the order passed in I.A.No.74 of 2008 and prayed

for dismissal of the I.A.No.103 of 2009. The learned Judge in order to give an opportunity to the respondent, allowed the application, stating that the respondent has given sufficient reason for allowing the I.A.No.103 of 2009.

5. Against the said order dated 19.11.2009 made in I.A.No.103 of 2009 in I.A.No.74 of 2008 in unnumbered A.S.No. Nil of 2008, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. From the materials on record, it is seen that the respondents could not comply with the conditional order. Considering the fact that the delay in filing the appeal is only five days and reason given by the respondents for failure to pay the cost in time is acceptable one, the learned Judge allowed the application. There is no irregularity or illegality warranting interference with the order of the learned trial Judge dated 19.11.2009. When the civil revision petition is taken up for hearing, the learned counsel appearing for the petitioner submitted that the petitioner died in the year 2014 and no steps have been taken.

V.M.VELUMANI,J.

gsa

8. In the result, the civil revision petition is dismissed as abated. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
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05.09.2017

To

The Principal Sub-Judge,
Puducherry.



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M.P.No.1 of 2010



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