

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4119 of 2009
& M.P.No.1 of 2009

1. N.Paramasivam
2. Manohari

... Petitioners

Vs.

1. Kullappan (deceased)
2. Special Officer,
Primary Agricultural and Rural
Development Bank,
Harur Town and Taluk, Dharmapuri District.
3. Deputy Registrar of Cooperative Societies,
Appavu Nagar, Dharmapuri,
Dharmapuri District.
4. Joint Registrar of Cooperative Societies,
Appavu Nagar, Dharmapuri,
Dharmapuri District.
5. Regional Manager,
T.N.State Agricultural and
Rural Development Bank,
K.Nethaji Bye Pass Road,
Dharmapuri, Dharmapuri District.

[Respondents 3 to 5 have remained exparte
before the lower court and hence given up]

6. K.Vanangamudi
7. K.Sumathi

8. K.Varadharajan

9. Ananthi

10.Minor Gautham

Rep.by his mother Ananthi

... Respondents

[RR6 to 10 brought on record as LR's of the deceased 1st respondent vide order of court dated 07.01.2014 made in MP Nos.1 to 3 of 2012 in CRP NPD No.4119 of 2009]

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 15.10.2009 made in I.A.No.10 of 2009 in A.S.No.11 of 2008 on the file of the Court of the Principal District Judge, Dharmapuri.

For Petitioners : Mr.P.Anburasan

For Respondents : Mr.M.S.Palaniswamy, for R2
Mr.P.Valliappan,
for R6 to R10

ORDER

This Civil Revision Petition has been filed to set aside the order and decretal order dated 15.10.2009 made in I.A.No.10 of 2009 in A.S.No.11 of 2008 on the file of the Court of the Principal District Judge, Dharmapuri.

2. The petitioners are the defendants 1 and 2 in the suit in O.S.No.115 of 2004 on the file of Sub Court, Dharmapuri. The first respondent / plaintiff filed suit against the petitioners and respondents 2 and 5 for recovery of money from the petitioners. After contest, the suit was decreed on 13.12.2007. The petitioners filed appeal in A.S.No.11 of 2008 before the Principal District Court, Dharmapuri and the said Appeal was dismissed for default on 12.11.2008. The petitioner filed I.A.No.10 of 2009 in AS.No.11 of 2008 to condone the delay of 126 days in filing the application to restore the appeal.

3. According to the petitioners, their counsel informed them that he cannot appear for the petitioners in the appeal and returned the bundle. Subsequently, the first petitioner fell sick and before they could engaged another counsel, the appeal was dismissed for default. According to the first petitioner, he was suffering from hypertension and was advised not to travel for some time, hence he could not meet his counsel and he was under the impression that the Appeal will be adjourned and they could engage another counsel. The first respondent filed counter denying the averments in the affidavit and submitted that the petitioners have not given any valid reason for condoning the delay. The

respondents also made their contentions on the merits of the Appeal. The learned Trial Judge dismissed the application holding that the petitioners were not diligent enough to prosecute their case.

4. Against the order of dismissal dated 15.10.2009 made in I.A.No.10 of 2009 in A.S.No.11 of 2008, the present Civil Revision Petition has been filed.

5. Heard the learned counsel for the petitioners as well as respondents and perused the materials available on record.

6. From the materials on record, it is seen that the Appeal filed by the petitioners was dismissed for default on 12.11.2008 and the petitioner have filed I.A.No.10 of 2009 in A.S.No.11 of 2008 to condone the delay in filing the application to restore the appeal, on the ground that their previous counsel returned the bundle and before they could engage another counsel, the appeal was dismissed. The respondents opposed the said application on the ground, that after taking number of adjournments, the petitioners did not argue the appeal chose to appear in person or through their counsel and therefore the appeal was dismissed. The

petitioners have not given any valid reason for condoning the delay for 126 days in filing the petition to restore the Appeal. According to the petitioners, their earlier counsel returned the bundle and they could not engage another counsel as the first respondent fell sick.

7. It is well settled law that application for condoning the delay must be considered liberally and the length of delay is not a criteria. The Court must see whether the parties have given acceptable and valid reasons and the intention of the parties are *bonafide* and not *mala-fide*. The parties should not be shut down at the threshold itself and must be given opportunity to put forth their case. In the present case, the petitioners have given valid reason for condoning the delay and to give them an opportunity to put forth their case, in the interest of justice, the application in I.A.No.10 of 2009 in A.S.No.11 of 2008 is allowed on a payment of cost of Rs.2,000/- (Rupees two thousand only) payable to the Chief Justice Relief Fund, payable within a period of one week from the date of receipt of a copy of this order. The learned counsel for the petitioner is directed to file the proof for having paid the cost of Rs.2,000/- to the Chief Justice Relief Fund.

8. In the result, this Civil Revision Petition is allowed and the order passed by the learned Trial Judge in I.A.No.10 of 2009 in A.S.No.11 of 2008 is set aside. As the appeal is of the year 2008, the learned Principal District Judge, Dharmapuri, is directed to dispose of the Appeal, as expeditiously as possible, not later than two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2017

Index : Yes/No
rgr

To

1. The Principal District Judge,
Dharmapuri.
2. The Special Officer,
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Harur Town and Taluk,
Dharmapuri District.
3. The Deputy Registrar of Co-operative Societies,
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V.M.VELUMANI, J.
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