

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP.No.1338 of 2001

and

C.M.P.Nos.7241 and 11828 of 2001

1.The District Collector,
State of Tamil Nadu,
Salem.

2.The Commissioner of Commercial Taxes,
Madras.

3.The Secretary to Government Commercial Taxes,
Madras.

4.The Director of School Education,
Chennai.

5.The Chief Educational Officer,
Salem.

.. Petitioners/Appellants

Vs.

K.Ganapathy

.. Respondent/Respondent

Prayer: Civil Revision Petition filed under 115 of Civil Procedure Code, against the order dated 08.10.1999 made in I.A.No.115/95 in Un-numbered A.S.No. /94 on the file of the learned Subordinate Judge, Namakkal, to set aside the same.

For Petitioners :Mr.T.Jayaram Raj
Government Advocate (CS)

For Respondent : No Appearance

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O R D E R

This petition is filed against the order dated 08.10.1999 made in I.A.No.115/95 in unnumbered A.S.No. /94 on the file of the learned Subordinate Judge, Namakkal.

2. The respondent herein filed a suit in O.S.No.209 of 1989 (O.S.No.172 of 1989 Vacation Court, Salem) before the District Munsif, Rasipuram praying to declare his date of birth as

12.06.1941 and further sought for a direction to the respondents/ petitioners herein to correct his date of birth in his Service Register and SSLC Certificate. The suit was decreed in his favour by the District Munsif, Rasipuram. Feeling aggrieved, the petitioners herein filed appeal along with interlocutory application in I.A.No.115/95 for condoning the delay of 989 days in filing the appeal before the Subordinate Court, Namakkal. The said application was dismissed by the learned Subordinate Judge, Namakkal. Feeling aggrieved, the petitioners have come up with this petition.

3. The learned counsel for the petitioners submitted that though the suit has been decreed as prayed for on 12.07.1991, this fact was informed to the petitioner herein only in letter dated 02.12.1991. It is further submitted that the judgment was delivered on 12.07.1991 and the copy application in C.A.No.284 of 1992 was made only on 16.03.1992 and the copies were made ready on 03.04.1992. Thereafter, the copies of decree and judgment were sent to the petitioner on 10.04.1992. The Copies of decree and judgment were sent for scrutiny by the authority concerned to the 3rd petitioner herein to consider whether an appeal should be filed or not. It was decided to file the appeal as against the decree and judgment of the trial court. The trial court Advocate was informed on 09.11.1992 to furnish the printed copies of decree and judgment to file the appeal. The Advocate in turn informed on 20.11.1992 that he had applied for printed copy of the judgment for filing the appeal on 10.11.1992 and on receipt, he will inform. Again, on 07.09.1993 they requested the Advocate to get the printed copy of judgment. The Advocate has informed in his letter on 14.09.1993 that no printed judgment is necessary to file the appeal, as per the circular of this Court. On the very next day i.e., on 15.09.1993 they have entrusted the matter to the Additional Government Pleader, Namakkal, to prepare the memorandum of appeal. He has handed over the draft appeal memo petition and affidavit on 21.09.1993 with instructions to obtain the signature from the Collector, Salem. But the District Collector returned them stating that the necessary affidavit has to be filed by the Department in charge of the case. Hence, there is a delay of 989 days in filing the appeal.

4. The case of the respondent in lower court is that the petitioners have not given any valid reason for the huge delay of 989 days in filing the appeal. Since the huge delay should not be condoned on the simple reason, the petitioners have not explained each and every day delay. Considering the case of both sides, the learned Judge dismissed the petition filed by the petitioner challenging the said order, the present Civil Revision Petition has been filed.

5. I Heard the learned Government Advocate appearing for the petitioners and there is no representation for the respondent and perused the materials available on record.

6. Admittedly, the petitioners have filed I.A.No.115 of 1995 for condoning the delay of 989 days in filing the appeal, but the same was dismissed on 08.10.1999, on the ground that the petitioners have not given any valid reason for the huge delay in filing the appeal.

7. The Hon'ble Supreme Court in a recent Judgment in Civil Appeal No.(S).3777 of 2015 it is held that there was a delay of 882 days delay in preferring an appeal suit and the said petition was dismissed by this Court by order dated 05.06.2013 in CRP(NPD)No.266 of 2011 and an appeal was filed before the Hon'ble Apex Court in Civil Appeal No.(S).3777 of 2015 in which the Hon'ble Apex Court has passed an order as follows:

"Leave granted.

This appeal arises out of an order dated 5th June, 2013, passed by the High Court of Judicature at Madras whereby CRP(NPD)No.266 of 2011 filed by the appellant has been dismissed and the order passed by the first appellate court declining condonation of 882 days in the filing of the appeal by the appellant affirmed.

We have heard learned counsel for the parties at some length. We are satisfied that in the facts and circumstances of the case, the first appellate court could and indeed ought to have condoned the delay in the filing of the appeal. Since, however, the delay is fairly inordinate, we are inclined to direct condonation subject to payment of costs.

We accordingly allow this appeal, set aside the orders passed by the High Court and that passed by the first appellate Court with the direction that upon deposit of a sum of Rs.50,000/- (Rupees fifty thousand) towards costs before the first appellate court within six weeks from today, the delay in the filing of the appeal shall stand condoned. The first appellate court shall hear and dispose of the first appeal filed by the appellant expeditiously and as far as possible within a period of six months from the date the costs are deposited by the appellant. The amount of costs shall be paid to the respondent.

The appeal is allowed in the terms and to the extent indicated above."

The Hon'ble Apex Court has allowed the Civil Appeal No.(S).3777 of 2015 on condition that the appellant shall pay a sum of Rs.50,000/- as cost to the respondent in the said appeal.

8. Therefore, applying the said judgment though the petitioners have not given any valid reason for each and every day delay, they have given reason that the delay was on the part of the trial Court Advocate in obtaining the printed copies of decree and judgment to file the appeal and also administrative reason for obtaining opinion is department to another. He has handed over the draft appeal memo petition and affidavit on 21.09.1993 with instructions to obtain the signature from the Collector, Salem. But the District Collector returned them stating that the necessary affidavit has to be filed by the Department in charge of the case. Hence, there is a delay of 989 days in filing the appeal. Therefore, by giving one more opportunity to these petitioners, this civil revision petition has to be allowed by setting aside the order passed in I.A.No.115 of 1995, but the petitioners should compensate the respondent.

9. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.115 of 1995, on condition that the petitioners should pay a sum of Rs.10,000/- as cost to the Hon'ble Chief Justice Relief Fund, High Court, Madras, within a period of four weeks from the date of receipt of a copy of this order;

(b) on production of payment receipt within the time stipulated by this Court, the trial Court viz. Sub-Judge, Namakkal, is hereby directed to number the appeal and dispose of the same within a period of three months, by giving notice to either parties;

(c) The learned Sub-Judge, Namakkal is directed to take up the appeal on day to day basis, without giving any adjournments to either parties. Both the parties are hereby directed to give their fullest co-operation for early disposal of the appeal.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

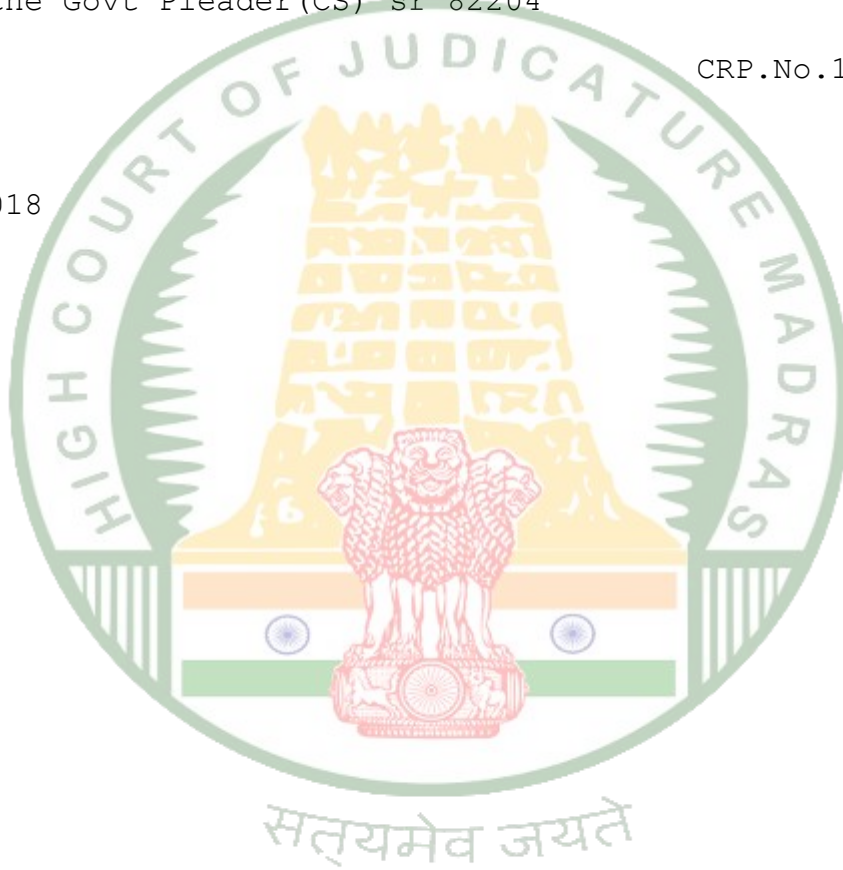
1.The Sub Judge,
Namakkal.

2.The Section Officer
VR Section
High Court, Madras

+1 cc to the Govt Pleader(CS) sr 82204

CRP.No.1338 of 2001

gmr(co)
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