

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No.3627 of 2012

1.K.Varadharajan
2.K.Ramachandran
3.Muthayammal
4.K.Govindarajan : Petitioners
versus

Canara Bank Sellappampatty Branch
rep. By its Branch Manager,
Namakkal : Respondents

PRAYER: Revision filed to set aside the order and decree passed in I.A.No.206 of 2011 dated 7.8.2011 in A.S.No.66 of 2012 on the file of the Sub Court, Namakkal.

For petitioners :: Mr.S.Senthilnathan

For respondents :: No appearance

ORDER

The suit filed by the respondent Bank was dismissed by the Trial Court. The Bank, thereafter, filed first appeal before the Subordinate Court, Namakkal. The appeal memorandum appears to have been returned by the lower Court Registry for compliance. The respondent re-presented the appeal along with an application in I.A.No.206 of 2011 to condone the delay of 600 days. The First appellate Court condoned the delay subject to

payment of Rs.2,000/- as cost. Since the cost amount was paid, the appeal was numbered. The order condoning the delay is under challenge in this civil revision petition.

2. The learned counsel for the petitioners contended that the suit was dismissed on 7 September 2009. Even according to the I Appellate Court, the appeal was filed only on 12 December 2009. Therefore, it is evident that the appeal was filed beyond the statutory period. According to the learned counsel, the Appellate Court without any rhyme or reason, condoned the delay without taking note of the fact that the appeal itself was belated.

3. None appears on behalf of the respondent.

4. The order condoning the delay in re-presenting the appeal is challenged primarily on the ground that the appeal was not accompanied by an application to condone the delay. The material dates and events indicate that the decree in O.S.No.136/2005 was passed on 7 September 2009. The appeal was filed on 12 December 2009. There is no document produced by the petitioners to show that the respondent received copy of the order immediately and in spite of the said fact, the appeal was not filed within the statutory period. I am therefore of the view that there is no merit in the contention that the appeal was filed belatedly.

5. The next question is as to whether the learned Subordinate Judge was correct in allowing the application with a nominal cost of Rs.2000/-.

6. The suit was dismissed on 7 September 2009. The respondent appears to have filed a review petition which was also dismissed for default by the Trial Court on 12 April 2011. The respondent in the meantime filed an appeal. The respondent dragged the petitioners from pillar to post instead of filing an appeal before the Appellate Court in time. I am therefore of the view that the Appellate Court was not correct in imposing a nominal cost. The cost awarded by the Court is enhanced from Rs.2,000/- to Rs.10,000/-. Similarly, I make it clear that in case the appeal is allowed, the petitioner would not be liable for interest for a period of 600 days, in view of the fact that it was only the respondent/Bank who was responsible for the delay in prosecuting the matter. The respondent is directed to pay the remaining amount of Rs.8,000/- (Rupees Eight Thousand only) to the petitioners, within a period of four weeks, failing which, the application in I.A.No.206 of 2011 would be dismissed, without any further reference to this Court.

7. The civil revision petition is disposed of with the above direction. No costs. Consequently, M.P.No.1 of 2012 is closed.

15.06.2017

Index:Yes/no
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K.K.SASIDHARAN, J.

(tar)

To
The Sub Court, Namakkal.

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