

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (NPD) Nos.4507 & 4508 of 2012

1.N.Thirupathi
2.N.Senthil

.. Petitioners
in both the CRPs

Vs.

T.G.Prabhakara
T.G.Padmananha

.. Respondent in
CRP.No.4507/2018
.. Respondent in
CRP.No.4508/2018

Revisions filed under Article 227 of Constitution of India against the fair and decretal order in I.A.Nos.46 and 47 of 2012 in Un-numbered A.S.No. of 2012, dated 27.09.2012 on the file of the Subordinate Judge, Hosur.

For Petitioners : Mrs.AL.Gandhimathi

For Respondents : No Appearance

COMMON ORDER

C.R.P.No.4507 of 2012 is directed against the order dated 27.09.2012 made in I.A.No.46 of 2012 in Un-numbered A.S.No. of 2012 on the file of the Sub-Court, Hosur. C.R.P.No.4508 of 2012 is

directed against the order dated 27.09.2012 made in I.A.No.47 of 2012 in Un-numbered A.S.No. of 2012 on the file of the Sub-Court, Hosur.

2. Since the point arises for consideration in these revisions are one and the same, both the revisions were taken up together and disposed of by this common order.

3. The petitioners herein are the defendants 2 and 3 in the suit being O.S.Nos.131 and 132 of 2011 on the file of the District Munsif Court, Hosur. Both the suits have been filed for permanent injunction restraining the defendants from disturbing the peaceful possession and enjoyment of the plaintiff in the suit properties.

4. By a judgment dated 18.11.2011, both the suits were decreed. Aggrieved by the same, the defendants 2 and 3 have filed appeal suits being Un-numbered Appeal Suit Nos. of 2012. Along with the appeals, the defendants 2 and 3 have filed I.A.Nos.46 and 47 of 2012 seeking to condone the delay of 178 days in filing the appeals.

5. In the affidavit filed in support of the petitions, the deponent N.Thirupathy, defendant No.2 has stated that his father was the first defendant in the suit and he only looking after the suit. It is stated

that the first defendant has also filed the written statement and had examined himself as D.W.1 in the suits. However, during pendency of the suits, he died and therefore, he could not be cross-examined. According to the defendants 2 and 3, after completion of the rituals and formalities following their father's death, they had come to understand that there are some Court proceedings and decree has been passed in the suits on 18.11.2011. Immediately, the defendants 2 and 3 contacted their Advocate and made arrangements to get a copy of the judgment. After obtaining the copy of the judgment, they decided to file appeals and there is a delay of 178 days in filing the appeals. In the affidavit, the deponent stated that numerous days of boycotting of Court, strike and Court holidays had also contributed considerably to the delay.

6. Resisting the applications, the respondent filed the counter stating that even though the petitioners were very much aware of the pendency of the suits directly, they did not bother to attend the Court and they were not interested in completing the trial proceedings. Their aim is only to drag on the proceedings. The reasons set out in the affidavit are false and concocted. It is stated that one of the sons of the first defendant viz., N.Raja was attending the Court proceedings before the trial Court regularly. He had also filed application seeking to implead himself as party defendant in the suit

and the said application was dismissed by the trial Court. The petitioners have not shown any valid, lawful and sufficient reason for condonation of delay of 178 days in filing the appeal. Hence, prays for dismissal of the applications.

7. Upon consideration of the rival submissions, the learned Subordinate Judge, Hosur, dismissed the application. Aggrieved by the same, the defendants 2 and 3 have filed these Civil Revision Petitions.

8. The learned counsel for the petitioners submitted that the learned Subordinate Judge ought to have seen that the father of the petitioners, who was handling the matter died on his way to attend to the Court and after completing the rituals following the death, the petitioners made a search and after a thorough enquiry, had got the papers and had filed the appeals along with applications seeking to condone the delay of 178 days in filing the appeals. He submitted that the learned Subordinate Judge ought to have seen that the reasons for delay have been properly explained. The learned counsel would further submit that the learned Subordinate Judge erred in observing that the reasons stated in the affidavit do not reveal any reason for the delay in filing the appeals after getting the certified copy of the order.

9. I heard Mrs.AL.Ganthimathi, learned counsel for the petitioners. No one appears in support of the respondents in both the civil revision petitions. I have perused the materials available on record.

10. According to the petitioners, they do not know the suit proceedings pending in Court and only after their father's demise, when they searched papers, they came to know about the suit proceedings. Thereafter, immediately, they contacted their Advocate and arranged to file appeals with a delay of 178 days.

11. In the order under revisions, the learned Subordinate Judge held that Nachiappan, father of the petitioners died on 06.07.2011 and petitioners applied for certified copies of the decree and judgment on 24.02.2012 and received the same on 28.02.2012. But, however, they have filed the appeals with delay condonation only on 15.06.2012. The learned Subordinate Judge further held that the delay is very long period and the reasons stated in the affidavit do not reveal any reasons for the delay in filing the appeals. It was also held that boycott of Court by the Advocates is not a reason to condone the delay.

12. On a perusal of the judgment under appeals, it is seen that in the preamble, the trial Court has stated as under:

" this case came before me for final hearing on 11.11.2011 in the presence of Mr.S.Subramanian, Advocate for the plaintiff and Mr.A.Ramprasad, Advocate for the defendants and since the first defendant was reported to dead and as his legal heirs who are already on record are also exparte and as already in this case the plaintiff side evidence was let in and closed and the defendant had also examined D.W.1 and as there is no defendants contesting the suit, this Court decides this case with the available evidence under Order XVII Rule 3 of CPC and this case stood over for consideration till this date and today this Court delivers the following JUDGEMENT"

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13. From the above, it is seen that after discussing the materials available on record, the trial Court decreed the suits. At the time of decree itself, the petitioners were made as parties in the suit as defendants 2 and 3.

14. The grievance of the petitioners is that because of bereavement in their family, they could not in a position to contact

their counsel and delay of 178 days occurred for filing the appeals.

15. In its order, the learned Subordinate Judge held that the reasons stated in the affidavit are not genuine and convincing. In the instant case, admittedly, the father of the petitioners died. Definitely, the entire family members would be in a sorrow mood, particularly, the petitioners, who are sons of the deceased. Though the petitioners have not explained each and every day delay by way of proof, in the facts and circumstances of the case, I find that the reason qua bereavement stated by the petitioners for the delay is convincing. Thus, I am of the view that the petitioners have shown sufficient cause for the delay of 178 days in filing the appeal.

16. For exercise of discretion to condone the delay in filing the appeal, the Court shall satisfy itself as to whether there was sufficient cause for exercising such discretion in condoning the delay. As stated above, the petitioners have shown sufficient cause for the delay.

17. On a perusal of the grounds of appeal, I find that the petitioners have raised strong case for success, particularly, no cause of action was made out by the plaintiff.

18. Refusal to condone the delay would result in foreclosing the

petitioners from putting forth their case.

19. In 1998 (7) SCC 123 (*N.Balakrishnan v. N.Krishnamurthi*), Supreme Court has summarized the principles which reads as thus :-

" Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time".

*A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held the words "sufficient cause". Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain V. Kuntal Kumari*, AIR 1969 SC 575 and *State of West Bengal V. The Administrator Howrah Municipality*, AIR 1972 SC 749."*

20. Normally, the revisional Court will not lightly interfere with the exercise of discretion by the Courts below. But where the lower Court has exercised the discretion arbitrarily or in a wrong conception

of law, to advance substantial justice, the revisional Court would certainly interfere. Having regard to the facts and circumstances of the case and the cause shown for the delay, I am of the view that the delay of 178 days in filing the appeal deserves to be condoned, however, subject to payment of costs. Since the respondent has not entered appearance, it would be appropriate to direct the petitioners to pay costs to the Tamil Nadu State Legal Services Authority.

21. In the result, both the Civil Revision Petitions are allowed on condition that the petitioners shall pay a sum of Rs.1,000/- (each petition) to the Tamil Nadu State Legal Services Authority, Chennai-104, within a period of two weeks from the date of receipt of a copy of this order.

13.02.2017

Note: Issue order copy on 10.04.2018
vs

Index : Yes/No
Internet : Yes/No

To

The Subordinate Judge,
Hosur.

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M.V.MURALIDARAN,J.

VS



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