

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 27.02.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

C.R.P.(NPD)No.4729 of 2012
and
M.P.No.1 of 2012

- 1.The Deputy Commercial Tax Officer,
Omalur.
- 2.The Deputy Commercial Tax Officer,
(Enforcement), Sankari. .. Petitioners

Vs.

- 1.A.Gunasekaran
2.V.Gunasekaran
3.K.Annadurai .. Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the Judgment and Decree dated 13.06.2012 passed in I.A.No.3 of 2011 in Unnumbered C.M.A.No. of 2011, on the file of the Principal District Court, Salem.

For Petitioners : Ms.M.Jaisree
Government Advocate

For Respondents : Mr.T.S.Vijaya Raghavan (for R1)

No Appearance (for R2 & R3)

ORDER

The Civil Miscellaneous Appeal filed by the government with a delay of 938 days was dismissed by the learned Principal District Judge, Salem by order dated 13.06.2012. Challenge is made to the said order in this Civil Revision Petition by the petitioners.

2.I heard Ms.M.Jaisree, learned Government Advocate for the petitioners and Mr.T.S.Vijaya Raghavan, learned counsel for the 1st respondent and perused the records. No representation on behalf of the respondents 2 and 3.

3.It is seen from the records that as against the order declaring the 1st respondent herein as insolvent by the learned Sub-Court, Mettur, the revision petitioners/respondents 1 and 2, namely Commercial Tax Department filed Civil Miscellaneous Appeal before the learned Principal District Court, Salem with a delay of 938 days. The perusal of affidavit filed in support of delay petition discloses that it is without proper explanation for the said delay. The trial Court by placing reliance upon the decision of the Hon'ble Apex Court reported in 2012 (2) CTC 240, in the case of the office of Chief Post Master General and others, dismissed the delay petition filed by the revision

petitioners. This Court is in full agreement with the principles of law laid down by the Hon'ble Apex Court in the Judgment cited above.

4.It is true that each and every day delay should be explained properly. The said yardstick will have no weight age when compared with rights and liabilities of the parties and it will vary depends upon the facts and circumstances of the case. Further, the merits of the case shall not be thrown away at the stage of delay petition itself. In the present case, the revision petitioners filed statutory appeal before the District Court and the same can't be dismissed without deciding the appeal on merits at the stage of section 5 application.

5.In this regard, it is useful to refer the Judgment of this Court reported in 2016 (5) CTC 117, wherein it is held that:

"When a Court of law deals with an application to condone the delay filed under section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an application to condone the delay as per section 5 of the Limitation Act, belatedly, no party will file the same with a malafide intention. If a party files a

delay condonation application belatedly, he or she runs a serious risk.

However, if an application filed under section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to part take in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at the early stage the cause of justice will be certainly defeated. In a condonation of delay application filed under section 5 of the Limitation Act, 1963 the length and breath of the delay is not a material / relevant factor”.

6.Hence, this Court deems it fit and proper to give one more opportunity to the revision petitioners, inclined to condone the delay which would meet the ends of Justice. However, the delay shall be condoned on payment of cost of Rs.10,000/- to be paid by the revision petitioners to the 1st respondent herein for the inconvenience caused to him.

7.In the result:

(a) this Civil Revision Petition is allowed on condition that the petitioners should pay a sum of Rs.10,000/- as cost to the 1st respondent herein within a period of four weeks from the date of receipt of a copy of this order;

(b) On production of the payment receipt, the Appellate Court is directed to number the appeal and dispose the same within a period of two months thereafter. Consequently, connected miscellaneous petition is closed.

27.02.2017

vs

Note: Issue order copy on 24.01.2019

Index: Yes

Internet: Yes

To

The Principal District Court, Salem.

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VS



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