



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) Nos.450 and 451 of 2015 (NPD)

A.Habibullah .. Petitioner/Petitioner/Appellant/
Plaintiff in both the C.R.Ps.

Vs.

1.Mohammed Ibrahim,
S/o.Hussain Ravuthar
2.K.Venkadasalam .. Respondents/Respondents/Respondents/
Defendants in both the C.R.Ps.

Prayer in both the C.R.Ps.:- Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 31.07.2009, passed in I.A.Nos.89 and 91 of 2006 in A.S.Nos.53 and 48 of 2003, by the learned Subordinate Judge, Kodaikanal.

For Petitioner : Mrs.Lakshmi Gopinathan
(in both the C.R.Ps.)

For R1 : No Appearance
(in both the C.R.Ps.)

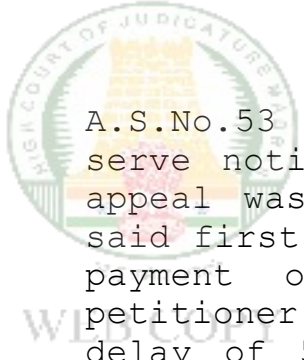
For R2 : Mr.D.Rajkumar
(in both the C.R.Ps.)

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decreetal order dated 31.07.2009, passed in I.A.Nos.89 and 91 of 2006 in A.S.Nos.53 and 48 of 2003, by the learned Subordinate Judge, Palani (Kodaikanal).

2. Since the issues involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

3.1. The petitioner is the defendant and the second respondent is the plaintiff in the suit in O.S.No.79 of 1995 on the file of the District Munsif Court, Kodaikanal. The second respondent is the plaintiff in the suit in O.S.No.79 of 1995 for declaration and permanent injunction. The said suit was decreed on 07.08.2003. Against the said judgment and decree, dated 07.08.2003, the petitioner has filed



A.S.No.53 of 2003. The petitioner has failed to pay Batta to serve notice on the respondent from 2003 to 2005 and the first appeal was posted on various dates, for payment of Batta. The said first appeal was dismissed for default on 28.02.2005 for non-payment of Batta and for non-appearance. Therefore, the petitioner has filed I.A.No.89 of 2006, seeking to condone the delay of 587 days in filing the petition to restore the first appeal on file.

3.2. The petitioner has also filed O.S.No.74 of 1995 against the respondents, before the District Munsif Court, Kodaikanal, for injunction. The said suit was dismissed, vide judgment and decree, dated 07.08.2003, by the learned District Munsif-cum-Judicial Magistrate, Kodaikanal. Against the said judgment and decree, dated 07.08.2003, the petitioner has filed A.S.No.48 of 2003. The said first appeal was dismissed for default on 03.08.2005. Therefore, the petitioner has filed I.A.No.91 of 2006 to condone the delay of 428 days in filing the petition to restore the first appeal on file.

3.3. According to the petitioner, his wife was not well and he was attending on her. He also stated that due to his ill-health, he was out of Station. Hence, the delay in both the cases is neither willful nor wanton.

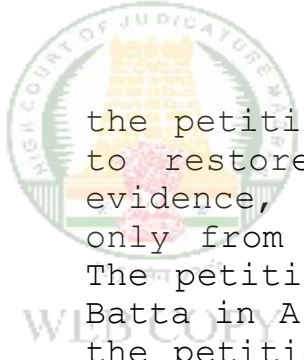
3.4. The second respondent filed counter affidavit and submitted that the petitioner has not given any valid reason to condone the delay in both the cases. The petitioner has taken a contradictory statement in the affidavit for the delay in filing the petitions to restore the first appeals on file.

3.5. Before the learned Subordinate Judge, Palani (Kodaikanal), the petitioner and his wife were examined as P.Ws.1 and 2 and marked two documents as Exs.P.1 and P.2.

3.6. The learned Subordinate Judge considering the averments in the affidavit, counter affidavit and both oral and documentary evidence, held that the petitioner's wife was admitted in the hospital from 16.09.2004 to 20.09.2004 and 20.06.2006 to 27.06.2006 and the petitioner was informed about the dismissal of the appeals by his Counsel and the petitioner has not explained the delay in filing the applications to restore the first appeals and dismissed the applications.

4. I have heard the learned counsel for the petitioner as well as the learned counsel for the second respondent and perused the materials available on record.

5. From the materials on record, it is seen that the first appeals in A.S.Nos.53 of 2003 and 48 of 2003 were dismissed for non-payment of Batta and for default respectively. The appeals were pending from 2003 to 2005 for payment of Batta. The petitioner has not given any reason for non-payment of Batta. The petitioner, in his evidence, admitted that his Advocate informed about the dismissal of the first appeals. In spite of the same,



the petitioner has not taken immediate steps to file applications to restore the first appeals. From the oral and documentary evidence, it is seen that the petitioner's wife was hospitalised only from 16.09.2004 to 20.09.2004 and 20.06.2006 to 27.06.2006. The petitioner has not given any valid reason for not paying the Batta in A.S.No.53 of 2003 from 2003 to 2005. The reason given by the petitioner to condone the delay in filing the applications to restore the first appeals, in both the applications, are not substantiated by the petitioner. It is well settled that the length of delay is not the criteria and the reason given for condonation of delay must be *bona fide* and sufficient to condone the delay. In the present case, the petitioner has not given valid and sufficient reason to condone the delay. In the circumstances, the learned Subordinate Judge has rightly considered these facts and dismissed the applications. There is no irregularity or illegality in the said order warranting interference by this Court.

6. In the result, these Civil Revision Petitions are dismissed. No costs.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Palani (Kodaikanal).

Copy To: The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.D.Rajkumar, Advocate in SR.No.8904

smn2

CSL/BS/28.02.2017 :3P/4C

Common order in
C.R.P. (MD) Nos.450 and 451 of 2015 (NPD)
16.02.2017