



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.06.2017

CORAM:

THE HONOURABLE DR. JUSTICE **G. JAYACHANDRAN**

C.R.P. (NPD) . (MD) No.1123 of 2017

and

CMP. (MD) No. 5136 of 2017

Karmegam

...Petitioner/Petitioner/Appellant

-Vs-

1.Dharmalingam ... Respondent/ 1st Respondent/ 1st Respondent
2.Mohammed Moosa ... Respondent / 2nd Respondent /
Auction Purchaser

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to call for the records relating to fair order and decretal order dated 25.07.2016 passed in I.A.No.262 of 2014 in C.M.A.SR.No.8531 of 2014 on the file of the Principal District Court, Dindigul.

For Petitioner : Mr.S.Natarajan
For Respondents : Mr.A.Hariharan

ORDER

The revision petitioner is the defendant in the suit in O.S.No.77 of 1990, on the file of the Sub Court, Dindigul. The said suit filed for recovery of money was decreed on 04.09.1997. Thereafter, the plaintiff has filed an Execution Petition in E.P.No.144 of 2007 before the Execution Court and brought the property of the petitioner for sale. The revision petitioner herein alleging some irregularity in obtaining the sale has filed an application in E.A.No.360 of 2008, which was dismissed by the Subordinate Judge, Dindigul, on 10.10.2012.

2.Aggrrieved by that, the revision petitioner herein has preferred the C.R.P.(MD)No.1224 of 2013 under Section 115 of C.P.C. The respondents herein have contested the revision petition. On the ground of maintainability of revision petition against the order passed under Order XXI Rule 90 of CPC., this Court has dismissed the revision petition, with liberty to the petitioner to file an appeal against the impugned order, passed in E.A.No.360 of 2008 in E.P.No.144 of 2007 in O.S.No.77 of 1990 before the Appellate Court. There is a specific observation in the said order that the time consumed in preferring the revision



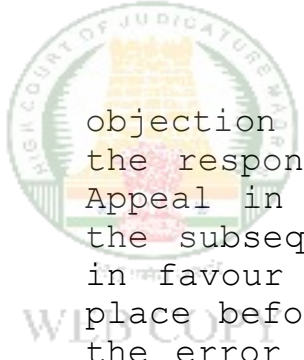
petition before this Court shall be excluded while calculating the delay, if any in filing the appeal. This revision petitioner, accordingly, has preferred the appeal along with I.A.No.262 of 2014 for condoning the delay of 99 days in preferring the appeal. The learned District Judge, Dindigul, has dismissed the condone delay petition recording the reasons for dismissing the petition.

3.The learned counsel appearing for the revision petitioner would submit that several irregularities have been pointed out in the sale proceedings, which was not taken note by the Execution Court. Aggrieved by that, the revision petition was filed. Since this court dismissed the revision petition with liberty to prefer an appeal before the appellate forum, an appeal challenging the order passed in E.A.No.360 of 2008 was presented before the District Court, Dindigul, with an abundant caution to inadvertence, the learned counsel has filed the petition to condone the delay of 99 days along with Civil Miscellaneous Appeal by wrongly calculating the time taken for preferring the appeal. It is, now brought to the notice of this Court that the order of the Execution Court which is impugned in the appeal is dated 10.10.2012. The revision petition before this Court was filed in time. This Court passed an order in revision petition on 14.10.2014. The original papers presented in the appellate Court was returned on 06.11.2014. Along with the order copy in C.R.P.No.1224 of 2013, Civil Miscellaneous Appeal was presented before the Appellate forum, namely District Court, Dindigul, on 24.11.2014, under Section 5 of Limitation Act.

4.The time prescribed for presenting an appeal against the order passed in Interlocutory Application before the appellate forum is 30 days whereas, time prescribed for preferring revision petition before this Court from any order passed by the Court is 90 days. Since, this revision petition was filed in time before this Court, the time consumed for disposal of the revision petition and time taken for delivery of the order in the revision petition has to be excluded. The presentation of Civil Miscellaneous Appeal before this Court is on 24.11.2014 which is well within the period of limitation prescribed under the Act. Therefore, there is no necessity at all to file an application to condone the delay in presenting the appeal.

5.However, the act of inadvertence by the learned counsel cannot deprive the right of the revision petitioner to agitate his right before the appellate forum and dismissal of Section 5 application is unwarranted.

6.Heard the learned counsel for the respondents. After perusing the records of the Courts below, this Court is of the ~~considered in copies~~ opinion that the application to condone the delay is unnecessary. Since, the Court below has dismissed the condone delay petition, the learned counsel for the respondent has no



objection in allowing this revision petition. However, subject to the respondents right to agitate the case in Civil Miscellaneous Appeal in respect of the conduct of the revision petitioner and the subsequent event viz., attempting to alienate the properties in favour of his wife. It is open to the parties concerned to place before the Court below, all the above points. Pointing out the error in the impugned order, this Court allows the revision petition. The Principal District Court, Dindigul, is directed to number the Civil Miscellaneous Appeal and dispose of the appeal, on merits after affording reasonable opportunity to the respondents, within a period of four months from the date of receipt of a copy of this order.

7.Hence, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Dindigul.

+1cc to M/S.A.Hariharan, Advocate SR.No. 60423
+1cc to M/S.S.Natarajan, Advocate SR.No. 60346

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