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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2561 of 2016 (NPD)

Aachimuthu

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the District Collector,
Tirunelveli.

2.The Tahsildar,
Tirunelveli,
Office at Swamy Nellaiappan High Road,
Tirunelveli.

3.Arulmigu Nellaiappan-Kanthimathiambal Thirukoil,
Tirunelveli,
Through its Administrative Officer.

4.Hindu Religious and Charitable Endowment Board,
Office at A.R.Line,
Palayamkottai,
Tirunelveli,
Through its Assistant Commissioner.

.. Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 29.07.2016, made in I.A.No.9 of 2015 in unnumbered A.S.No...of 2015, on the file of the Principal Subordinate Court, Tirunelveli.

For Petitioner : Mr.S.A.Ganapathyraman

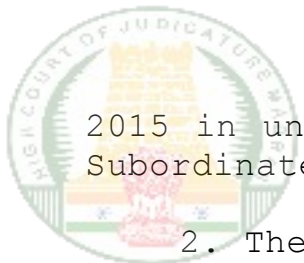
For R1, R2 & R4 : Mr.K.Maheshraja
Government Advocate

For R3 : Mr.S.Madhavan

ORDER

<https://hcservices.ecourts.gov.in/hcservices/>

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 29.07.2016, made in I.A.No.9 of



2015 in unnumbered A.S.No...of 2015, on the file of the Principal Subordinate Court, Tirunelveli.

2. The petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.626 of 2009 on the file of the I Additional District Munsif Court, Tirunelveli. The petitioner filed the suit for declaration and mandatory injunction. By judgment and decree, dated 30.07.2012, the said suit was dismissed. The copies of the judgment were made ready on 21.06.2013. The petitioner filed first appeal on 05.01.2015 along with I.A.No.9 of 2015 to condone the delay of 531 days in filing the appeal. According to the petitioner, his wife - Antonyammal was suffering from cancer and she was taking treatment in the Hospital. The petitioner was taking care of her and therefore, he could not file the first appeal in time. When he contacted his Advocate on 02.01.2015, he was informed that the appeal was not filed. Therefore, the delay in filing the appeal is neither willful nor wanton, but due to the reasons stated above.

3. The third respondent filed counter affidavit and the fourth respondent also filed separate counter affidavit and the same has been adopted by the respondents 1 and 2. The respondents have stated that the petitioner has not explained the delay in filing the first appeal properly and he has not given any valid and sufficient reason to condone the huge delay of 531 days and the Advocate Office is very near to the petitioner's residence and prayed for dismissal of the application.

4. Before the learned Principal Subordinate Judge, Tirunelveli, the petitioner examined himself as P.W.1 and marked four documents as Exs.P.1 to P.4. The learned Principal Subordinate Judge considering the evidence, the materials available on record and the documents filed by the petitioner and also considering the fact that the copies of the judgment were made ready on 21.06.2013 and the petitioner's wife was admitted in the Hospital only on 03.09.2014 and the petitioner has not explained the delay from 21.06.2013 to 03.09.2014, dismissed the application for condoning the delay of 531 days in filing the first appeal.

5. Against the said order of dismissal dated 29.07.2016, the petitioner has come out with the present Civil Revision Petition.

6. Mr.S.A.Ganapathyraman, learned counsel for the petitioner submitted that the petitioner could not file appeal in time due to illness of his wife, who subsequently died on 13.05.2015. He further submitted that the petitioner has explained the delay properly and has given valid and sufficient reason for condoning the delay. The learned Principal Subordinate Judge also submitted that liberal approach must be there for condonation of delay, otherwise opportunity will be shut down to the parties to put forth their case on merits.



7. Mr.K.Maheshraja, learned Government Advocate appearing for the respondents 1, 2 and 4 and Mr.S.Madhavan, learned counsel for the third respondent submitted that the properties are belonged to the third respondent Temple and even in the Revenue Records, the properties are recorded in the name of the Temple. They further submitted that the learned Principal Subordinate Judge after full fledged trial, by giving cogent and valid reason, has dismissed the application. The petitioner has not filed the appeal in time and has not explained the delay in filing the appeal. The petitioner especially did not explain the delay from 21.06.2013 to 03.09.2014, when the judgment was made ready and his wife was admitted in the Hospital for treatment. In the cross-examination, he has stated that due to vision, he could not file the first appeal in time and he has not stated nowhere in the affidavit, the delay was caused due to lack of his vision and therefore, they prayed for dismissal of the Civil Revision Petition.

8. I have considered the arguments advanced by the learned counsel appearing for the parties and perused the materials available on record.

9. The petitioner has filed first appeal against the dismissal of suit filed by him with an application to condone the delay of 531 days in filing the first appeal. In the affidavit, the petitioner has stated that due to his illness of his wife, who was suffering from cancer and subsequently, died on 13.05.2015, he could not file the first appeal in time.

10. From the documents filed by the petitioner and the deposition of the petitioner as P.W.1, it is seen that his wife was admitted in the Hospital on 03.09.2014. The petitioner has not given any reason for not filing the first appeal from 21.06.2013 to 03.09.2014. Further, in the cross-examination, he has stated that due to lack of vision, he could not file the first appeal during that time. As rightly pointed out by the learned Principal Subordinate Judge, the petitioner has not pleaded so in the affidavit. Further, the petitioner has stated that he contacted his Advocate on 02.01.2015 and came to know that no appeal was filed. He has not stated when he handed over the judgment and other papers to his Advocate and as to why he did not diligently follow the matter with his Advocate. The learned Principal Subordinate Judge has considered all the aspects and has rightly dismissed the application by giving cogent and valid reason. In the circumstances, there is no irregularity or illegality in the order dated 29.07.2016, passed in I.A.No.9 of 2015 in unnumbered A.S.No....of 2015, by the learned Principal Subordinate Judge, Tirunelveli.



11. In the result, the Civil Revision Petition is dismissed.
No costs.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Tirunelveli.

2.The District Collector,
Tirunelveli.

3.The Tahsildar,
Tirunelveli,
Office at Swamy Nellaiappar High Road,
Tirunelveli.

4.The Administrative Officer,
Arulmigu Nellaiappar-Kanthimathiambal Thirukoil,
Tirunelveli.

5.The Assistant Commissioner.
Hindu Religious and Charitable Endowment Board,
Office at A.R.Line,
Palayamkottai,
Tirunelveli.

+1 cc to M/s.S.A.ganapathyraman, Advocate in SR.No.4170

smn2

CSL/BS/28.02.2017 :4P/7C

C.R.P. (MD) No.2561 of 2016 (NPD)
24.01.2017