



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.761 of 2018

Tamilselvi ... Petitioner/Appellant/Plaintiff

-vs-

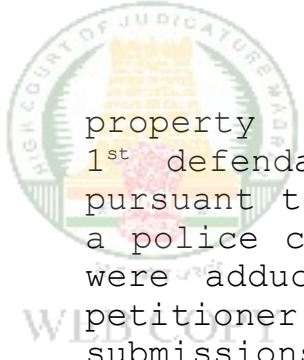
1. Ainal Beevi
2. The Government of Tamil Nadu,
Rep. by its District Revenue Officer,
Ramanathapuram,
Ramanathapuram District.
3. The Government of Tamil Nadu,
Rep. by its District Collector,
Ramanathapuram,
Ramanathapuram District.... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the decree and judgment dated 19.9.2017 passed in I.A.No.51 of 2017 in Unfiled A.S.No of 2017 by the Honourable Principal District Judge, Ramanathapuram.

For Petitioners : M/s.G.Prabahari
For R1 : No Appearance
For R2 & R3 : Mrs.VPM.Vaishnavi
Govt. Advocate

O R D E R

The suit in O.S.No.8 of 2010 was filed by the plaintiff seeking for the relief of declaration among various other relief and the said suit was partly allowed and therefore, she sought to file an appeal with a delay of 54 days. The plaintiff also filed I.A.No.51 of 2017 seeking to condone the delay, which was dismissed by the Trial Court on the ground that the condition of payment of costs was not complied with. Challenging the said order, the petitioner is before this Court.



property and at the instance of one Ganesan @ Haja Mohideen, the 1st defendant created problem to the plaintiff. The plaintiff, pursuant to the frequent intervention of the 1st defendant, lodged a police complaint and during enquiry, all the relevant documents were adduced by the plaintiff. It is the further case of the petitioner that the Trial Court, inspite of hearing the submissions in full, had allowed the suit in part, thereby caused irreparable loss to her. Since she had fallen into sick, she could not be able to contact her lawyer and therefore, the appeal was not filed before expiry of time, which is neither wanton nor wilful.

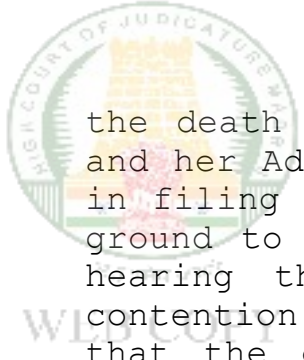
3. The revision petitioner states that if this petition is not allowed, much prejudice would be caused to the petitioner and moreover, the Trial Court erred in rendering the judgment purely on the basis of the sketch marked by the Advocate Commissioner as well as on the basis of the documents, which were not marked and relied upon by the parties. Though the Trial Court was inclined to condone the delay, on account of non payment of cost, the application ended in automatic dismissal. Contending that the petitioner ought to be given an opportunity to defend her case, it is prayed that the order of the Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for R2 and R3 and there is no representation on behalf of the 1st respondent. This Court also perused the material documents available on record.

5. It is stated by the petitioner that she had filed an affidavit before the Trial Court, explaining the reasons for the delay and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner. It is the claim of the petitioner/plaintiff that though the conditional order was passed by the Trial Court, consequent to the refusal of the Court in condoning the delay of one day in payment cost, the application met with its bad fate.

6. It is appropriate to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of **G.Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam, rep. by its Executive Officer, Cuddalore**, reported in **2010 (1) MWN Civil 837**, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party could not be able to contact the lawyer in respect of his/her case.

7. In the present case on hand, it has been repeatedly reiterated by the petitioner that pursuant to her ill-health and



the death of her husband, there was no communication between her and her Advocate and therefore, the delay of 54 days has occurred in filing petition to set aside the order, which is an acceptable ground to consider the case of the petitioner. Accordingly, upon hearing the submissions of both sides and finding merits in contention raised by the petitioner, this Court is of the view that the order dated 19.9.2017 passed in I.A.No.51 of 2017 in Unfiled A.S.No. of 2017 by the learned Principal District Judge, Ramanathapuram, is liable to be set aside.

8.In the result,

(a) this Civil Revision Petition is allowed and the order dated 19.09.2017 passed in I.A.No.51 of 2017 in Unfiled A.S.No. of 2017 by the learned Principal District Judge, Ramanathapuram, is hereby set aside.

No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

1. The Principal District Judge,
Ramanathapuram.
2. The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Prabahari, Advocate Sr.No.72664

AR

VB/SKN/SAR2/30.08.2018/3P/5C

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