



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.1913 of 2017
and
CMP (MD) No.9865 of 2017

Appavu Gounder : Revision Petitioner/Petitioner/Appellant

Vs.

1.V.Balsamy
2.Minor P.Balaji
Rep. by his father / first respondent
3.Adaikkan(died)
4.C.Murugesan
5.Senkuttuvan
6.L.Thamilselvan
7.M.Pooviammal
8.M.Durai
9.S.Selvi
10.Minor.Gowtham
11.Minor.Gowri

R.10 & 11 are rep. by their mother /9th respondent

: Respondents/Respondents/

Respondents

Prayer: Civil Revision Petition is filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 20.03.2017 passed in I.A.No.115 of 2015 in unnumbered A.S.No. -- of 2017 on the file of the Principal Sub Court, Dindigul.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.R.Karthic Rajan - for R1 & R2
: Refused - RR 7 & 9
: Died - RR3 & 8

O R D E R

This civil revision is filed against the order dated 20.03.2017 made in I.A.No.115 of 2015 in unnumbered A.S.No. -- of 2017 on the file of the Principal Sub Court, Dindigul, dismissing the application to condone the delay of 250 days in filing the petition to file an appeal against the decree and judgment dated 13.01.2015 passed in O.S.No.167 of 2006.



2. The learned counsel appearing for the petitioner has contended that the petitioner is the 6th defendant in O.S.No.167 of 2006 and he has filed an Appeal with a delay of 250 days in filing the petition to file an appeal against the Judgment and decree passed in O.S.No.167 of 2006. Due to his old age, he was suffered from sickness and he was hospitalised. After recovery only, he met his advocate and intend to file an appeal. As the delay caused is neither wilful nor wanton, the petitioner has submitted the petition to condone the delay, which was dismissed by the learned Trial Judge on 20.03.2017, against which the present Civil Revision Petition is filed.

3. Per contra, the learned counsel appearing for the respondents 1 and 2 has contended that the petitioner had filed this revision with an intention to drag on the proceedings and he knows about the execution proceedings filed by them, then only he preferred an appeal with an inordinate delay.

4. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents and perused the materials available on record.

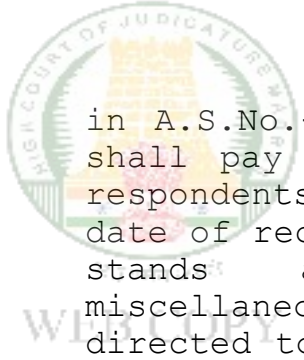
5. It is seen from the records that the suit is filed for declaration and for permanent injunction and the suit was decreed on 13.01.2015, in favour of the plaintiff. On perusal of records, it is seen that the 6th defendant has preferred an appeal in the month of December 2015. The learned Judge concluded that there is an inordinate delay on the part of the petitioner and hence the Judge dismissed the petition.

6. The main grievance of the petitioner is due to his sickness he was not able to contact his counsel in time and he is also ready to compensate the plaintiffs by way of costs.

7. The learned Counsel appearing for the respondents 1 and 2 though initially opposed for condoning the delay, after some arguments, would submit that the revision may be allowed on terms, with a direction to the learned Trial Judge to dispose of the appeal within the time stipulated by this Court.

8. Keeping in view of the above facts and also considering the fact that the petitioner is an aged person and due to his sickness, he was not able to file the appeal in time, this Court is of the view that an opportunity shall be given to him, to proceed further. As the delay was huge, i.e., 250 days in filing the appeal against the judgment and decree dated 13.01.2015, this Court feels ends of justice would be met if this revision is ordered on terms.

9. In the result, this revision is allowed and the order passed by the learned Trial Judge in I.A.No.115 of 2015 in A.S.No.--- of 2017 dated--- is set aside. The I.A.No.115 of 2015



in A.S.No.--- of 2017 is allowed on condition that the petitioner shall pay a sum of Rs.2,000/- [Rupees Two Thousand only] to the respondents 1 and 2, as costs, within a period of one week from the date of receipt of a copy of this order, failing which, the petition stands automatically dismissed. Consequently, connected miscellaneous petition is closed. The learned Trial Judge is also directed to dispose of the appeal within three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The Principal Subordinate Court,
Dindigul

+One cc to Mr.H.Lakshmi Shankar, Advocate, SR.No.42966

+One cc to Mr.R.Karthic Rajan, Advocate, SR.No.42947

rm

RL/4C/3P/SKN/RSK/SAR1/1/2/2018

C.R.P. (NPD) (MD) No.1913 of 2017

19 .01.2018