



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) (MD) No.1721 of 2018

1. Sadamuniyan

2. Muniyasamy

... Petitioners/Petitioners/Appellants

-vs-

1. Deivanai

2. Arumugam

3. Madasamy

4. Mathavi

5. Murugasakthi

6. Sakthi

7. Muniyasamy

8. Murugaselvam

9. Chandira

... Respondents/Respondents/Respondents

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code praying to call for the records pertaining to the order dated 12.12.2017 made in I.A.No.28 of 2017 in A.S.No.U/F/2017 on the file of the Subordinate Court, Mudukulathur and set aside the same.

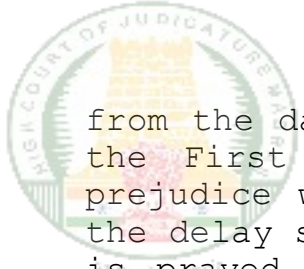
For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.K.C.Ramalingam

O R D E R

The revision petitioners are the defendants in O.S.No.78 of 2014 on the file of the learned District Munsif, Mudukulathur and in the suit, the plaintiffs sought for the relief of declaration, etc. The suit was decreed in favour of the plaintiffs, against which, the petitioners/appellants sought to file an appeal and since there was a delay of 473 days in preferring the appeal, the revision petitioners/appellants had filed an application in I.A.No.28 of 2017 before the Subordinate Court, Mudukulathur for condoning the delay, which came to be dismissed by the First Appellate Court, on the ground that no proper reasons were assigned for the delay. Aggrieved by such dismissal, the revision petitioners are before this Court.

2. It is the case of the revision petitioners that though the decree and judgment were passed as early as on 16.03.2016, the application for obtaining certified copy was filed only after 13 days from the date of judgment by their Advocate and subsequently, the order copy was handed over to them on 28.09.2016. It is the further case of the petitioners that in the interregnum period, the delay had occurred and the appeal could not be filed within 30 days



from the date of judgment. Contending that the delay in approaching the First Appellate Court is neither wanton nor wilful and no prejudice would be caused to other side, in the event of condoning the delay so as to enable the petitioners to challenge the order, it is prayed that the order of the Trial Court is liable to be set aside.

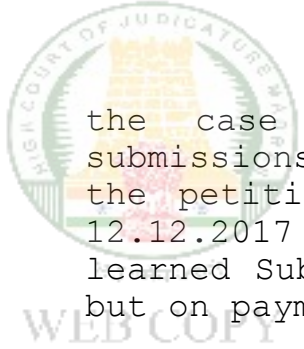
3. Learned counsel for the respondents/plaintiffs has contended that the petitioners have not approached the Court with clean hands, as they have blamed their Advocate for the delay, which had occurred only on account of the lethargic attitude of the petitioners themselves. It is further contended that the petitioners have not adduced correct reasons for the delay and as per the judgment of this Court in the case of M/s.Gulf Air Company, Chennai vs. V.M.Rajalingam, reported in (2005) 4 MLJ 676, the party filing the petition for condoning the delay has to show sufficient cause or bona fide for the delay, in absence of which, it can be inferred that the party has no interest in prosecuting the case and in such an event, the delay cannot be condoned. Therefore, the respondents sought for dismissal of the petition at the threshold.

4. Heard the learned counsel on either side and also perused the material documents available on record.

5. It is stated by the petitioners that they had filed an affidavit before the First Appellate Court, explaining the reasons for the delay and the Court has not taken into account the said affidavit and dismissed the petition in a biased manner. It is further stated that because of the fault on the part of their Advocate in handing over the order copy belatedly, the entire appeal remedy available to the petitioners cannot be washed away. It is the claim of the respondents / plaintiffs that though the Advocate representing the petitioners was very much available in the locality, it was falsely averred in the petition that he was out of station, due to which, the order copy could not be obtained in time and the said suppression, according to the respondents, is a good ground for dismissing the petition.

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 petitioners that their Advocate had gone to Chennai for few months and therefore, the delay of 473 days has occurred in filing appeal against the order after receiving order copy from their Advocate, which is an acceptable ground to consider



the case of the petitioners. Accordingly, upon hearing the submissions of both sides and finding merits in contention raised by the petitioners, this Court is of the view that the order dated 12.12.2017 made in I.A.No.28 of 2017 in A.S.No.U/F/2017 by the learned Subordinate Judge, Mudukulathur, is liable to be set aside, but on payment of costs.

8.In the result,

(a) this Civil Revision Petition is allowed and the order dated 12.12.2017 made in I.A.No.28 of 2017 in A.S.No.U/F/2017 by the learned Subordinate Judge, Mudukulathur, is hereby set aside, subject to the condition that the petitioners shall jointly or severally pay a sum of Rs.25,000/- to the learned counsel for the respondents within a period of four weeks from the date of receipt of a copy of this order;

No costs.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar(CS-IV)

ns/ar

To:

1. The Subordinate Judge,
Mudukulathur.
2. The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.k.C.Ramalingam, Advocate in SR No.77262

+1cc to Mr.T.Lajapathi Roy, Advocate in SR No.77414

C.R.P. (NPD) (MD) No.1721 of 2018

NM/SV/SAR IV/30.10.18/3P/6C.