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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) Nos.45 and 46 of 2013

and

M.P. (MDNo.1 of 2013

C.R.P. (NPD) (MD) No.45 of 2013:

M.Thangaraj : Petitioner /Defendant

vs.

Dindigul District Cheroot Workers Welfare
Association through its President,
Mr.Subbiah

: Respondent /Plaintiff

C.R.P. (NPD) (MD) No.46 of 2013:

M.Thangaraj : Petitioner /1st Defendant

vs.

1. Dindigul District Cheroot Workers Welfare
Association through its President,
Mr.Subbiah

: 1st Respondent/Plaintiff

2. Executive Officer,
Kottai Mariamman Temple,
Dindigul.

3. Managing Trustee,
Arulmigu Kottai Mariamman Temple,
Dindigul.

:2&3rd Respondents /
2&3 Defendants

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of Code of Civil Procedure, against the order dated 16.11.2012, passed in I.A.Nos.20 and 21 of 2012 in A.S.No.12 of 2012 on the file of the Additional sub Court, Dindigul.

C.R.P. (NPD) (MD) No.45 of 2013:

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

For Petitioner

For Respondent

: Mr.S.Anand Chandrasekar

: No Appearance

**C.R.P. (NPD) (MD) No. 46 of 2013:**

For Petitioner : Mr.S.Anand Chandrasekar
For Respondents : No Appearance

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COMMON ORDER

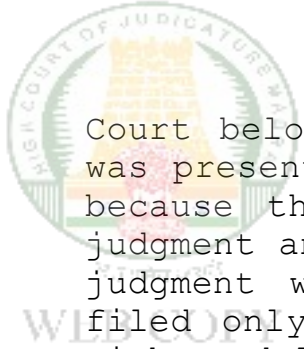
The first defendant in the suit in O.S.No.99 of 2010 on the file of the Principal District Munsif Court, Dindigul, is the revision petitioner herein.

2.The brief facts that are necessary for the disposal of these petitions are as follows:

2.1.The respondent in this revision petition is a society represented by its President. The suit in O.S.No.99 of 2010 was filed for a declaration that the plaintiffs are entitled to conduct "Mandagapadi" during Mariamman Masi Festival and for consequential injunction. The suit filed by the first respondent was dismissed on 11.11.2011. It was thereafter, the respondent herein filed an appeal in A.S.No.12 of 2012, before the District Sub Court, Dindigul with a delay. It is admitted that the appeal was not filed along with the petition to condone the delay. Since the plaintiff / respondent did not file any application to condone the delay in filing the appeal and the appeal was wrongly entertained and numbered, the defendant filed I.A.No.20 of 2012 in A.S.No.12 of 2012 to reject the appeal. It was thereafter, the plaintiff filed an application to condone the delay in filing the appeal suit, in I.A.No.21 of 2012. The trial Court dismissed I.A.No.20 of 2012 and allowed I.A.No.21 of 2012 on the ground that the non-filing of petition to condone the delay is by mistake and that the plaintiff's suit should not be thrown out on that ground. In view of the conclusion reached by the Court in the application justifying the delay, the petition in I.A.No.21 of 2012 was allowed and the other petition was dismissed. Aggrieved over the same, the first defendant in the suit preferred the above civil revision petitions.

3.This Court considered the nature of dispute and the order passed by the lower Court in the two applications. The ground on which the revision petitioner argued is that the appeal itself is an abuse of process of law, as the same was presented even without filing an application to condone the delay. When Court has no power or jurisdiction to entertain an appeal, which is filed beyond the period of time, it is submitted that the appeal is summarily liable to be dismissed.

4.Having regard to the facts and circumstances of the case, this Court has no reason to interfere with the order passed by the



Court below. First of all, it is not in dispute that the appeal was presented with a delay of 23 days and that the delay was only because the copy application for getting the certified copy of judgment and decree of trial Court was filed belatedly. Though the judgment was delivered on 11.11.2011, the copy application was filed only on 16.12.2011. Thereafter, the appeal has been filed with a delay of 23 days. Though the appeal was filed without a petition to condone the delay, the appeal has been numbered. This is of course an irregularity. But a petition to condone the delay is filed thereafter and the Court has condoned the delay accepting explanation. This Court is of the view that defect in presenting the appeal is cured when a petition is filed to condone the delay. This Court is convinced that the presentation of appeal without a petition to condone the delay is by inadvertence and hence, the lower Court is right in allowing the petition to condone the delay and dismissing the petition to reject the appeal. By the order of lower Court, an opportunity is given to the respondent to prosecute the appeal on merits and there is no illegality as the Court has discretion in such cases. Hence, this Court find no merits in these Civil Revision Petitions. Accordingly, these Civil Revision Petitions are dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(writ)

/True Copy/

Sub Assistant Registrar

To

1. The Additional sub Court, Dindigul.
2. The Section Officer,
Vernacular Records, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

cmr

MK/SV MMS/SAR 3/31.05.2018/3P/4C

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