HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4526 of 2018

ORDER:

The present Civil Revision Petition came to be filed assailing the order dated 23.04.2018, passed in I.A.No.86 of 2015 in A.S.S.R.No.9818 of 2012 by the II Additional District Judge, Amalapuram, wherein an application filed under Sections 148 and 151 of CPC to condone the delay of 763 days in representing the main appeal was allowed.

2. A perusal of the record shows that O.S.No.38 of 2000 on the file of Senior Civil Judge, Amalapuram, for relief of partition came to be dismissed. Aggrieved by the same, the petitioner therein preferred an appeal, which was returned with some objections. The learned counsel for the appellant therein pleaded that after receipt of record from the Court, it was misplaced in the office and hence delay occurred in representing the appeal. The same was opposed by the learned counsel for the respondent therein on the ground that there is no proper explanation for the delay. The Court below allowed the said delay petition keeping in view the interest of both the parties. Challenging the same, the present Civil Revision Petition came to be filed.

3. Learned counsel for the petitioner mainly submits that after dismissal of the suit and long after expiry of limitation for filing appeal, the petition for delay cannot be accepted. Moreso, when there is no proper explanation for delay.

4. It appears that there was no delay in presenting the appeal, but there was a delay in representing the appeal. The reason for delay appears to be that the record of the case was misplaced in the office of the learned counsel for the petitioner. It is to be noted that for the laches on the part of the counsel, the party cannot be penalized. Further, the Apex Court in ***N.Balakrishnan Vs. M.Krishnamurthy***[1] held that there should be liberal construction in considering the application seeking condonation of delay, when there is no inaction, laches and negligence on the part of the person claiming the suit.

5. Having regard to the above and since the delay is on the part of the learned counsel appearing for the appellant, for which the party cannot be penalized, I see no ground to interfere with the discretion exercised by the Court below in condoning the delay.

6. Hence, the Civil Revision Petition is dismissed. No costs.

7. As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

10.08.2018
vhb

[1] (1998 (7) SCC 123)