

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P(NPD).No. 2756 of 2008

Rama Reddiar

...Petitioner

vs.

1.Kanthammal

2.Dhanam @ Dhanalakshmi

3.Muniswari @ Subashini

4.Senthamarai

5.Natarajan

...Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 04.12.2007 made in I.A.No.293 of 2006 in A.S.No. of 2006 on the file of Subordinate Judge, Gingee.

For Petitioner : Mr.AL.Gandhimathi

For Respondents : Mr.R.Karunakaran for R2
No appearance for R1 and R3
R4 and R5 dismissed vide
Court order dated 17.07.2018

ORDER

This Civil Revision Petition is filed as against the order of the Trial Court dismissing the application to condone the delay of 43 days in filing the appeal, challenging the decree and Judgment in O.S.No.296 of 1999.

2. It is stated by the revision petitioner that the third defendant in the suit has died after the decree and Judgment passed in O.S.No. 296 of 1999. Therefore, he has impleaded the legal representatives of the third defendant as respondents 3 to 6. There was a delay of 43 days in filing the appeal. The first Appellate Court dismissed the application, mainly on the ground that, the revision petitioner has not filed an application under Order 22 Rule 4 of Code of Civil Procedure to implead the legal representatives of the third defendant. Further, the Court has also held that the reasons for the delay has not been properly stated in I.A.No.293 of 2006.

3. Heard the learned counsel appearing for the revision petitioner and the respondents.

4. The delay in filing the appeal was only 43 days. The suit was filed for permanent injunction restraining the defendants from interfering with the drawing of water from the well. The suit has been dismissed, after full trial. It appears that the suit is dismissed on 09.09.2005 and after the dismissal of the said suit, the third defendant had died. Therefore, the revision petitioner has filed an appeal as against the Judgment and decree in O.S.No.296 of 1999, after making the legal representatives of the third defendant as the respondents 3 to 6 in the appeal and he has also filed an application to condone the delay of 43 days.

5. It is to be noted that, the third defendant has died after the Judgment and decree of the said suit. In such scenario, the normal procedure would be to implead the legal representatives of the deceased defendant in the appeal and file an appeal. There is no question of invoking Order 22 Rule 4 of Code of Civil Procedure. The death of the third defendant has not been disputed. In the facts and circumstances, the first Appellate Court ought to have entertained the application. The first Appellate Court ought not have dismissed the application, on the ground that a petition under Order 22 Rule 4 of the Code of Civil Procedure has not been filed.

6. Further, it is pertinent to point out that, the delay is only 43 days. The first Appellate Court ought to have taken note of the fact that the right of appeal is a statutory right. Technically such right should not be defeated. Hence, the order passed by the first Appellate Court dismissing the application requires interference. The Court ought to have exercised discretion judicially in order to advance the substantial justice. As the first Appellate Court has not done so, in this case, accordingly, the order of the first Appellate Court in I.A.No.293 of 2006 is set aside. The Civil Revision Petition is allowed. No costs.

7. The first Appellate Court shall take the appeal on file and contest the same on merits within a period of six months from the date of receipt of a copy of this order.

सत्यमेव जयते

19.03.2019

Index : Yes / No
Speaking/Non-speaking order
mbi/vkr

To
The Subordinate Court,
Gingee.

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N.SATHISHKUMAR, J.

mbi/vkr



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