

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.3691 of 2007 &

M.P.No.1 of 2007

1. The District Collector,
Villupuram.

2. The Revenue Tahsildar,
Thirukoilur.

... Petitioners

Vs.

1. Mrs.Megarunisha
2. Mr.Jalaludin

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the Order dated 11.07.2005 made in I.A.No.704 of 2002 in unnumbered A.S. on the file of the Principal District Court, Villupuram.

For petitioners : Mr.N.Manikandan
Government Advocate

For Respondents : Mr.Md. Ibrahim Ali

ORDER

This revision has been filed against the Order of the Principal District Judge, Villupuram in dismissing the application to condone the delay of 447 days in filing an appeal against the decree and judgment passed by the first appellate Court on 12.06.2001 in O.S.No.802 of 1994.

2. The suit in O.S.No.802 of 1994 has been filed challenging the attachment proceedings passed by the Government under the Revenue Recovery Act as against Sheik Routhier and the first plaintiff, who is the wife of said Sheif Routhier and the second plaintiff. They have filed the suit challenging the proceedings under the Revenue Recovery Act attaching the property belonging to them. It appears that the above suit was decreed. Therefore, the Government has filed an appeal with a delay of 447 days. In the application it is specifically stated that the file went to the Government Pleader Office to get his opinion and thereafter, it was misplaced in the Government Pleader Office. Therefore, the delay has occurred.

3. The respondent filed a counter denying the allegations of the petitioners. The Tahsildar was examined as P.W.1 in the above application. He has also given reasons for such delay. However, the trial Court dismissed the application stating that there is no sufficient cause to condone the delay. As

against which, the present revision has been filed.

4. The learned Government Advocate submitted that the delay was due to misplace of the bundle in Government Pleader Officer and the delay is bonafide and the suit itself has been filed challenging Revenue Recovery Proceedings and unless the delay is condoned and the revision petitioners are allowed to contest the appeal, there will be huge loss to the Government and hence, submitted that the first appellate Court in dismissing the application is not proper.

5. The learned counsel for the respondents contended that the delay has not been properly explained. There was no sufficient cause shown by the Government for condoning such a huge delay. Hence, submitted that the trial Court has rightly dismissed the application. In support of his contentions he relied upon the judgment of the Apex Court in **N.Balakrishnan Vs. M.Krishnamurthy** reported in **AIR 1998 SC 3222**.

6. Heard the learned Government Advocate for the revision petitioners and the learned counsel appearing for the respondents and perused the materials available on record.

7. It is not in dispute that the suit has been filed challenging the revenue recovery proceedings against the respondents and raise the attachment in respect of the property. It is the specific contention of the Government Advocate that after the decree, the file went to the Government Pleader Office and it got mixed up with other bundles and therefore, the delay occurred. P.W.1 has also been examined in this regard. He has also spoken clearly about the delay as required to be explained. There must be sufficient cause shown by the party who seeks to condone delay. When the sufficient cause is shown, the Court should not be rigid in extending discretion by shutting the parties their valuable rights at the initial stage itself. Admittedly, P.W1 was examined and he has given reason and that cannot be ignored. Nowadays, how the Government Pleader appointed on tenure basis having political cloud and their functions in the Court of law is also sometimes not approved by the Court. Sometimes they do not even show their attention to the cases of the Government properly. Of Course, it is not all the Government Pleaders are of such character. But only a few, I am citing as example, not generally.

8. When P.W.1 himself has clearly stated in his evidence that the case bundle was sent to the Government Pleader Office for obtaining opinion, the bundle was misplaced in the Government Pleader Office and the bundle was not returned to the Government to proceed the matter. When such explanation is given, I am of the view that liberal approach has to be given. In Government

Department not only for obtaining opinion from the Government Pleader, but sometime administrative sanction also require to pursue the matter. When that being the position and when the Tahsildar himself has deposed before this Court that the delay is due to misplacement of the bundle in the Government Pleader Office, the trial Court ought to have given liberal approach. No doubt as per the judgment of the Honourable Supreme Court cited supra, each and every day delay has to be properly explained and there must be sufficient cause. Absolutely, there is no dispute with regard to the above judgment. In the present case, P.W.1 has been examined and he had given reasons or such delay. Admittedly revenue recovery proceedings have been initiated against the respondents by the first petitioner. This fact is not in dispute. Therefore, when sufficient cause has been shown for such delay, the first appellate Court ought to have extended its discretion in condoning the delay.

9. Accordingly, this Civil Revision Petition is allowed and the Order of the first appellate Court is set aside. The first appellate Court is directed to number the appeal and decide the appeal on merits within a period of six months from the date of receipt of a copy of this Order. Consequently, the connected miscellaneous petition is closed. No cost.

14.03.2019

vrc

To

The Principal District Judge,
Villupuram.



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N.SATHISH KUMAR, J.

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