

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM
THE HONOURABLE MR. JUSTICE C. SARAVANAN

C.R.P. (NPD).No. 1693 of 2015

and

M.P. No. 1 of 2015

R.Ezhilvani

... Petitioner

Vs.

1.The State Express Transport Corporation,
Tamil Nadu Ltd.,
Represented by its General Manager,
No.2, Thiruvalluvar House, Pallavan Salai,
Chennai – 600 002.

2.The Metropolitan Transport Corporation,
Represented by its General Manager,
Pallavan House, Chennai.

... Respondents

Prayer: Civil Revision petition is filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 12.02.2015 in C.M.P.No.447 of 2013 in A.S.S.R.No.18354 of 2013 on the file of the Principal City Civil Court at Chennai.

For Petitioner : Mr.K.P.Shanthosh

For Respondents : Mr.M.Chidambaram

ORDER

The present Civil Revision Petition is challenged against the order passed by the Principal City Civil Court, Chennai on 12.02.2015 in C.M.P.No.447 of 2013 in A.S.S.R.No.18354 of 2013. The said Civil Miscellaneous Petition was filed to condone the delay of 376 days in filing the appeal against the Judgement and Decreetal order dated 13.02.2012, passed by the trial Court in O.S.No.10127 of 2009.

2. The petitioner herein was a licensee of the respondents Transport Corporation who faced with a threat of eviction after the expiry of license period approached the XI Assistant City Civil Court, Chennai in O.S.No.10127 of 2007. After the trial the suit was dismissed by a Judgment and decree dated 13.02.2012. However, the appeal was filed with a delay of 376 days.

3. It is the case of the petitioner that the counsel engaged by her before the XI Assistant City Civil Court, Chennai had suffered from cardiac disease and undergone bye-pass surgery, therefore did not intimate her about the Judgement and decree. It was stated that only

<http://www.judis.nic.in> When the respondents came to re-possess the property pursuant to the Judgment and decree dated 13.02.2012, the petitioner became aware of the said Judgment and decree.

4. The learned Judge has examined the issue and held that the petitioner cannot put the entire blame on the alleged illness of the advocate while dismissing the application for condonation of delay.

5. Aggrieved by the same, the petitioner has preferred the present civil revision petition. At the time of admission of the present Civil Revision Petition, an interim stay was granted by this Court. Thereafter, the case has been kept pending and has been awaiting for final hearing.

6. The learned counsel for the petitioner would draw the attention of this Court to the decision of this Court in the following cases:

a. **V.Veeraraghavan Vs State Bank of India, Mettupalayam Branch, Mettupalayam** reported in 1999-3-MLJ-702.

b. **Pavayammal and another Vs S.N.Chockalingam, S.N.Arumugam, S.N.Venugopal, and the State of Tamil Nadu represented by its District Collector, Erode District, Erode** 2009 (5) CTC 414, wherein Paragraph (7) reads as follows:

“7.The word 'sufficient cause' under Section 5 of the Limitation Act will have to be interpreted in a purposeful and meaning way. As a matter of fact, the Court of law is not supposed to adopt a pedantic approach instead it has to take a liberal view while dealing with the Application of condonation of delay. Ordinarily a party does not stand to gain by lodging in Appeal belatedly. Refusing to condone a delay will result in meritorious matter being thrown out at the nascent stage and thereby the cause of justice being defeated. On the other hand, if a party is allowed to enter into the scene of main

proceedings, then the matter can be decided on merits. Of course a Court of law providing due opportunities to the parties to prove their case. The judiciary is respected not on account of its power to legalize injustice on technical grounds but is capable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities.”

c. The decision of the Honourable Supreme Court in the case of **The Commissioner, Mysore Urban Development Authority Vs S.S.Sarvesh**, 2019 (3) CTC 940, wherein the Paragraph (22) it was held as follows:

“22.In our view, the Courts below should have seen that the First Appeal is a valuable right of the Appellant and, therefore, the Appellant-Authority was entitled for an opportunity to prosecute their Appeal on merits. If the Appellant's Advocate did not appear may be for myriad reasons, the Court could have imposed some Cost on them for restoration of their Appeal to compensate the Respondent (Plaintiff) instead of depriving them of their valuable right to prosecute the Appeal on merits. This is What Justice Vivian Bose has reminded to the Courts while dealing with the cases of this nature in Sangram Singh (supra) to do substantial justice to both the parties to the lis. Indeed, dismissal of the Appeal in default and dismissal of the Appeal on merits makes a difference. The former dismissal is behind the back of the litigant and latter dismissal is after hearing the litigant. The latter is always preferred than the former.”

wherein it is stated that this Court cannot act in a pedantic manner and therefore the delay should be condoned.

appearing for the petitioner and the learned counsel appearing for the respondents.

8. This is a case where, the petitioner's license to the property had already expired at the time when she filed O.S.No.10127 of 2009. The suit came to be dismissed on 13.02.2012 after trial. Thereafter the petitioner filed the appeal belatedly before the City Civil Court in April 2013 with an application to condone the delay of 376 days. The application was disposed on 12.02.2015. Thereafter, the petitioner has preferred the present Civil Revision Petition in the year 2015 as a result of which the respondents have not been able to proceed with execution proceeding for another four years.

9. I do not find any merits in the present civil revision petition as the petitioner has extended the congenity of her stay not only during the pendency of the suit application but also during the pendency of the present Civil Revision Petition on the strength of interim order dated 21.04.2015. There is no justification in condoning the delay further as the petitioner has over stayed on the property beyond the period of license taking advantage of the court proceeding. Hence, I am of the view that the present Civil Revision Petition deserves to be dismissed.

C.SARAVANAN, J.

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10. Accordingly, the Civil Revision Petition is dismissed. No cost.

Consequently, the connected Miscellaneous Petition is also closed.

01.07.2019

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Index : Yes/No

Internet : Yes/No

To

The Principal City Civil Court,
Chennai.

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