

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1385 of 2013

Durairaj

... Petitioner

v.

1. Sarjoja Ammal
2. Muthukumari
3. Dhanasundari
4. Sarala

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 23.09.2003 passed in I.A.No.241 of 2002 in unnumbered Appeal No. .../2002 on the file of the Principal District Judge, Pondicherry

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For Petitioner : Mrs. Aswini Devi
for Mr.T.R. Rajaraman

For Respondents : Mr.T.S. Basaran

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ORDER

Challenging the fair and final order passed in I.A.No.241 of 2002 in unnumbered Appeal No. .../2002 on the file of the Principal District Court, Pondicherry, the defendant in O.S.No.691 of 1998 on the file of the Principle District Munsif Court, Pondicherry, has filed the above Civil Revision Petition.

2.1 The respondents-plaintiffs filed the suit in O.S.No.691 of 1998 for declaration and permanent injunction. The suit was decreed *ex parte* on 12.11.1998. Thereafter, the revision petitioner filed an application in I.A.No.2664 of 2000 to condone the delay of 573 days in filing the application to set aside the *ex parte* decree. The Trial Court dismissed the application.

2.2 Against which, the petitioner preferred a Civil Revision Petition before this Court and this Court also confirmed the order passed by the Trial Court. After the dismissal of the Civil Revision Petition, the petitioner preferred First Appeal with an application in I.A.No.241 of 2002 to condone the delay of 1138 days in preferring the appeal. In the

affidavit filed in support of the application, the petitioner has stated that his counsel Mr.P.Raja had died and therefore, the appeal could not be filed in time.

3. The learned counsel appearing for the respondents submitted that the petitioner has stated the very same reason in the affidavit filed in support of the application in I.A.No.2664 of 2000 and the Trial Court as well as this Court refused to accept the reasoning given by the petitioner.

4. The petitioner cannot wait for an indefinite period for filing an Appeal. When his counsel had passed away, he should have made an alternative arrangement for filing the appeal at the earliest point of time. The delay of 1138 days cannot be condoned on this ground. The delay is inordinate, which was not properly explained by the petitioner.

5. In the judgment reported in **2015 (1) SCC 680 [H.Dohil Constructions Company Private Ltd. v. Nahar Exports Limited and another]**, the Hon'ble Supreme Court held that in the absence of sufficient cause shown by the party, the delay should not be condoned.

6. In the case on hand, the petitioner has not given any acceptable reason for accepting the delay of 1138 days and the Lower Appellate Court has rightly dismissed the application.

7. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

14.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

The Principal District Judge,
Pondicherry.

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M.DURAISWAMY, J.

Rj



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