

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD) No.3479 of 2019

and

C.M.P.No.22866 of 2019

1.Usha Bai
2.S.Ravichandar Rao
3.R.Vinodh Kumar

... Petitioners

Vs.

1.A/m.Angala Parameswari and
Kasi Viswanathaswamy Temple
Rep. by its Executive Officer,
No.5, South Mada Street,
Choolai, Chennai - 112.

2.The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai - 3.

... Respondents

Prayer: Petition filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decretal order passed in C.M.P.No.722 of 2018 in A.S.SR.No.64328 of 2017 dated 31.01.2019 by the learned Principal Judge, City Civil Court, Chennai.

For Petitioners

: Mr.G.Sugumaran

ORDER

This revision petition has been filed against the fair and decretal order made in C.M.P.No.722 of 2018 in AS.SR.No.64328 of 2017 on the file of the Principal Judge, City Civil Court, Chennai, by order dated 31.01.2019.

2.As against the decree passed by the trial Court in O.S.No.8912 of 2006 by the XIII Assistant Judge, City Civil Court, Chennai, by judgment and decree dated 15.02.2010, the petitioners, who are the defendants in the suit, should have filed the first appeal in time, but they seem to have filed the first appeal on 19.08.2013 before the First Appellate Court with SR.No.37320 of 2013. Thereafter, as claimed by the petitioners herein, the appeal bundle seems to had been returned for rectification of mistakes and thereafter, the appeal bundle had never been represented after complying the return and thereafter, it seems that, the decree holder approaches the Execution Court and filed EP, where, after receipt of notice, these revision petitioners/defendants started probing the issue after some years and they claimed to have found the counsel, to whom the case was entrusted originally to file the appeal who claimed to have lost the bundle itself and

accordingly, another counsel, claimed to have been engaged and who after obtaining the certified copy of the judgment and decree, filed the appeal belatedly once again on 18.04.2017. Therefore, there was a delay of 2275 days in filing the said appeal and in order to condone the said delay, an application under Order XLI Rule 3(A) of C.P.C. was filed in C.M.P.No.722 of 2018 before the First Appellate Court and the said application has now been rejected through the impugned order, against which, the present revision has been filed.

3.I have heard Mr.G.Sugumaran, learned counsel appearing for the revision petitioners and I have perused the materials placed before this Court.

4.Admittedly, the decree was dated 15.02.2010 and even at the first instance, admittedly the appeal claimed to had been filed with SR.No.37320 of 2013 only on 19.08.2013, being the first time presentation of the appeal itself, only after 3 1/2 years from the date of decree. Therefore, for the said delay of 3 1/2 years, absolutely no reason was cited by the revision petitioners.

5. Thereafter, it is the further story that, the said appeal filed in 2013 since had been returned for compliance of certain rectification of mistakes thereafter, it could not be represented for several years. Only after receipt of notice in the execution proceedings, the petitioners claimed to have contacted the counsel, who already lost the bundle and thereafter took steps to get a certified copy of the judgment and decree and thereafter only, filed the present appeal only on 18.04.2017.

6. Absolutely there is no acceptable or plausible reason on the part of the revision petitioners for such a very huge delay of 2275 days.

7. Even at the first instance there had been a delay of more than three years, as the appeal admittedly filed originally on 19.08.2013 and even for the said delay, no reason had been given, assuming for subsequent delay, there has been a reason, even though it is also not acceptable.

8. The right of the parties decided by the Civil Court can be agitated by an aggrieved party from the trial Court to First Appellate Court and

thereafter, upto the Hon'ble Supreme Court in the hierarchy, as has been provided under the provisions of the Civil Procedure Code, insofar as the civil matters are concerned, as well as under the provisions of the Constitution.

9. Merely because there are three tier Judicial fora and in some cases four tier Judicial system available for the litigant public to agitate the issue till their end, the litigants like the present petitioners, who had been in long slumber for several years, cannot wake up at one fine morning and knock the doors of the judiciary at their convenience, by giving some flimsy reasons and this kind of attitude on the part of the litigant public cannot be appreciated by judiciary, since the establishment of legal right especially the statutory civil right must be available only to the vigilant litigant and not for those who have been in long slumber and who deal with the litigations at their convenience in cavalier manner.

10. The Hon'ble Apex Court has repeatedly held that, mechanical acceptance of delay petitions, that too, for a longer period without any plausible reason would be an injustice and such kind of gesture cannot be shown to an undeserving litigant.

11.This is one such case, where the Court cannot show any indulgence or sympathy towards the litigant who are the petitioners herein to condone the said delay of 2275 days, as there has been absolutely no reason for condoning such huge delay.

12.The First Appellate Court also, after having considered all these aspects, have rightly rejected the claim of the revision petitioners to condone the said delay through the impugned order, which, in the considered opinion of this Court, does not require any interference from this Court, that too, in the revisional jurisdiction.

13.In that view of the matter, this Court is not inclined to entertain this revision and hence, it deserves to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

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31.10.2019

Index : Yes
Internet : Yes
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To

The Principal District Judge,
City Civil Court,
Chennai.

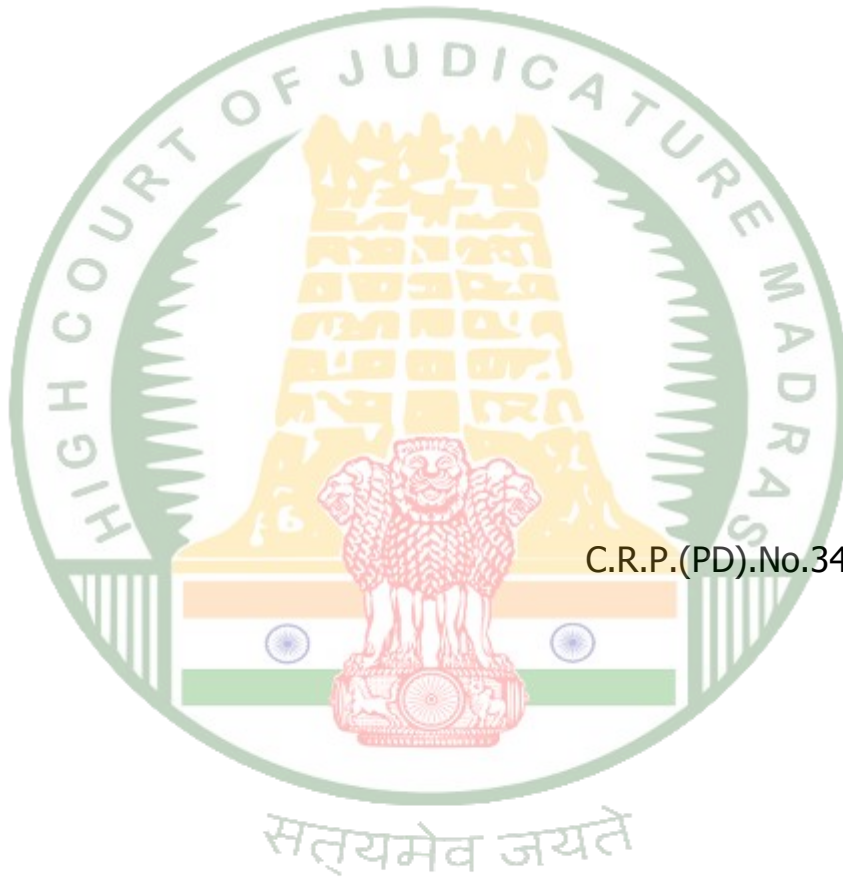


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R.SURESH KUMAR, J.

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