

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.04.2019

PRONOUNCED ON : 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (NPD).No.2713 of 2014
and
M.P.No.1 of 2014

- 1.The District Collector,
Collectorate, Salem.
- 2.The Revenue Divisional Officer,
Attur.
- 3.The Tahsildar,
Gangavalli.

.. Petitioners

vs

Devaki

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C, to set aside the Fair and Decretal order dated 09.01.2014 passed in I.A.No.102 of 2013 in Unnumbered A.S.No. of 2013 on the file of Principal District Judge, Salem.

For Petitioners : Mr.N.Manikandan
Government Advocate (CS)

For Respondent : M/s.K.Ponmani for M/s.Zeenath Begam

ORDER

The petitioners had filed the present Civil Revision Petition against the fair and decretal order in I.A.No.102 of 2013 in unnumbered A.S.No. of 2013 dated 09.01.2014 passed by the learned Principal District Judge, Salem.

2. The petitioners are the defendants in O.S.No.58 of 2012 filed by the respondent/plaintiff. The said suit was filed for declaration title and for a secondary direction to the petitioners/defendants to issue patta. After contest the suit was decreed on 26.11.2012. The appellants filed an appeal along with the application to condone the delay of 230 days in filing the above appeal.

3. The reasons given by the petitioners/defendants for condoning the delay which reads as under:

“3. I submit that the above appeal is from the Judgement and Decree in O.S.No.58 of 2012 on the file of the Subordinate Judge, Attur on 26.11.2012. The Additional Government Pleader failed to inform the result of the Judgment to me. The respondent herein on 03.06.2013 approached my office and insited me to grant Patta and produced the copy of the Decree and Judgement passed by the Sub-Judge, Attur. After gone through the Decree and Judgment I found that the suit was ended against us. Thereafter I approached the Additional Government Pleader to get me a copy of Decree and Judgment in the above suit.

4. The copy application for obtaining the certificate copies of the Decree and Judgment was filed on 04.06.2013 and the copies were made ready on 05.06.2013 and delivered on 06.06.2013. Soon after getting the copies of

the Decree and Judgement we have come forward to this Honourable Court with a petition to condone the delay of 230 days in filing the appeal.”

4. The respondent/plaintiff filed a counter. Relevant portion of the counter reads as under:

“ 5. Whereby this respondent after obtain the Decree against the petitioners, approached the Village Administrative Officer and Tahsildar of Gangavalli along with Decree copy on 08.01.2013, 09.01.2013 requesting them to grant patta in her name. Thereafter she again approached the first petitioner Collector through an application along with decree copy on 11.02.2013.

6. This respondent further submits that once again the respondent had approached the third petitioner, the Tahsildar of Gangavalli with relevant documents on 18.02.2013. On receipt of such application dated 18.02.2013, the third petitioner was direct her to produce Guide line value related to the suit property. Hence the person who sworn the affidavit had a knowledge about Decree and Judgment even on 09.01.2013 itself. Hence he must be vigilant in preparing appeal in time. Moreover he may not shift over the burden of delay to the Additional Government Pleader, Attur. Hence the applicants did not approach the Court with sufficient cause.”

5. The Court after considering the affidavit filed in respect of the application for condoning the delay has dismissed. The application filed by the petitioners/defendants stating that the reasons given in the affidavit was not sufficient.

6. While passing the Judgment, the Court relied upon the decision of

the Honourable Supreme Court in *Office of the Chief Post Master General and others vs. Living Media India Ltd., and another* 2012(2) CTC, it was held as follows:-

3) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swayed for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

7. I have gone through the facts of the case. It is evident that the petitioners were not diligent in filing the appeal in time. The petitioner has blamed their counsel. However, considering the fact that the status of the land has been challenged, no prejudice will be caused if the delay is

condoned. Further, in the cited case, the Hon'ble Supreme Court refused to condone the delay as despite affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period.

8. I find merits in allowing the Civil Revision Petition subject to cost and terms. Consequently, the present Civil Revision Petition is allowed subject to payment of costs of Rs.5,000/-.

9. Considering the facts of the case, this Court directs as follows:

i) The impugned order passed in I.A.No.102 of 2013 in unnumbered A.S.No. of 2013 on the file of the Principal District Court, Salem is hereby set aside;

ii). The petitioners shall deposit a sum of Rs.5,000/- to the credit of I.A.No.102 of 2013 in A.S.No. of 2013 before the Principal District Court, Salem, within a period of four weeks from the date of receipt of copy of this order.

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kkd/arb

iii) On such deposit, the respondent-plaintiff is permitted to receive the above said amount.

iv) On payment of the aforesaid amount and production of proof of payment, the Principal District Court, Salem shall endeavour to dispose the appeal within a period of nine months thereafter. No cost. Consequently, connected miscellaneous petition is also closed.

06.06.2019

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
kkd/arb

To

The Principal District Court, सत्यमेव जयते
Salem.

PRE-DELIVERY ORDER IN
C.R.P (NPD).No.2713 of 2014
and
M.P.No.1 of 2014

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