

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD)No.3017 of 2014
and M.P.No.1 of 2014

K.Shanmugam

...Petitioner

Vs.

G.Sennimalai Gounder

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 16.4.2014 in I.A.No.631 of 2013 in A.S.CFR.No.4460 of 2013 pending on the file of the Principal District Judge, Tiruppur.

For Petitioner : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

For Respondent : Ms.P.Lavanya
for Mr.J.Franklin

ORDER

Challenging the fair and decretal order dated 16.04.2014 in I.A.No.631 of 2013 in A.S.CFR.No.4460 of 2013, on the file of the Principal District Judge, Tiruppur, the appellant, who is the first defendant in O.S.No.95 of 2005 on the file of the Additional

Subordinate Court, Tiruppur, has filed the above Civil Revision Petition.

2. The respondent has filed the suit in O.S.No.95 of 2005 for partition and for separate possession. The Trial Court has passed a preliminary decree. Subsequently, the petitioner filed a final decree application before the trial Court. The trial Court also passed the final decree in I.A.No.741 of 2010 on 30.11.2012. Aggrieved over the same, the first defendant preferred an appeal in A.S.CFR.No.4460 of 2013 along with application in I.A.No.631 of 2013 to condone the delay of 32 days in filing the appeal.

3. In the affidavit filed in support of the petition, the petitioner has stated that he could not collect the papers from the trial Court Advocate and hence, there was a delay of 32 days in filing the appeal. The Lower Appellate Court dismissed the application stating that the petitioner has not properly explained the reason for the delay, in the affidavit filed in support of the petition. However, I am satisfied with the reasons stated in the affidavit filed in support of the petition to condone the delay of 32 days.

4. When the delay was only 32 days, in the interest of justice, I am of the view that the delay should have been condoned by the Lower Appellate Court. In such view of the matter, the fair and decreetal order passed in I.A.No.631 of 2013 are set aside and the delay of 32 days in filing the appeal stands condoned. Consequently, I.A.No.631 of 2013 is allowed. The Principal District Judge, Tiruppur, is directed to number the appeal and decide the same on merits and in accordance with law as expeditiously as possible.

5. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2019

Index : Yes / No

Internet : Yes

Speaking order / Non Speaking Order

ms

To

The Principal District Judge,
Tiruppur.

M.DURAISWAMY, J.

ms



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