

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) Nos.4923, 4924 and 4925 of 2014
and

Miscellaneous Petition Nos.1 of 2014

1.Andavar and Co., Tires by
Its Managing Partner,
N.Venkatachalam,

2.N.Venkatachalam

3.Yasodhaiyammal

4.Malarkodi ...Petitioners in C.R.P.No.4923 of 2014

1.Andavar and Co., Spares,
N.Kosavampatti Village,
its Managing Partner,
Rathnakumar.

2.Rathnakumar

3.Rajagopal

4.Manimala

5.Deebalakshmi ... Petitioners in C.R.P.No.4924 of 2014

1.Andavar and Co., Tires by
Its Managing Partner,
N.Venkatachalam,

2.N.Venkatachalam

3.Yasodhaiyammal

4.Malarkodi ...Petitioners in C.R.P.No.4925 of 2014

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Vs

1.M.K.Venkatachalam

... 1st Respondent in C.R.P.No.4923 of 2014

2.K.V.Ganesan

...1st Respondents in C.R.P.No.4924 of 2014

3.M.K.Venkatachalam

...1st Respondent in CRP 4925 of 2014

4.District Registrar(Societies),
S.S.Complex,
Trichy Road,
Namakkal.

5.Sampath

6.Elangovan

7.Balagopalan

8.Krishnan

9.Ramani

10.Pushpa

... 2 to 8 Respondents in all CRP's

... Respondents

COMMON PRAYER: Civil Revision Petitions have been filed under Article 115 of the Civil Procedure Code to set aside the fair and decretal orders dated 13.10.2014 made in I.A.Nos.91, 92 and 93 of 2014 respectively in unnumbered A.S., on the file of the Sub-Court Namakkal.

For Petitioners : Ms.N.Manokaran (in all C.R.Ps.)

For R1 : Mr.C.Jagadish (in all C.R.Ps.)

For R2 and R8 : No appearance (in all C.R.Ps.)

C O M M O N O R D E R

These Civil Revision petitions are directed as against the order dated 13.10.2014 passed in I.A.Nos.91, 92 and 93 of 2014 respectively in un numbered A.S, on the file of the Subordinate Court, Namakkal.

2 Before the Subordinate Court, Namakkal, the petitioners in these three applications have filed the above referred Interlocutory Applications under Order 41 Rule 3(A) CPC., to condone the delay of 368, 425 and 368 days respectively, in filing the appeal against the judgment rendered in O.S.No.897 of 2006 dated 30.01.2013, O.S.No.895 of 2006 dated 21.12.2012 and O.S.No.899 of 2006 dated 30.01.2013 respectively. Since all these three revision petitions have been filed by the same revision petitioners for the same relief, it was decided by this Court to pronounce a common order as follows:

3 The first respondent in all these three revision petitions filed suits, as against the petitioners and seeks the relief of declaration and injunction. The learned Principal District Munsif, in its judgment dated 21.12.2012 and 30.01.2013 had dismissed the suits.

4 Aggrieved over the said finding, the petitioners herein preferred appeals with the above referred delay. In fact for condoning the delay separate applications have been filed under Order 41 rule 3(A) CPC., which were allowed on cost. The learned Subordinate Judge, Namakkal, in its order dated 13.10.2014 allowed the condone delay applications, subject to payment of cost which has to be paid by the first respondent herein.

5 Aggrieved over the said finding, the petitioners herein preferred these Civil Revision Petitions and prayed to set aside the order passed by the learned Subordinate Judge, Namakkal.

6 The learned counsel appearing for the petitioner would contend that in the Affidavit filed before the learned Subordinate Judge, Namakkal, the first respondent herein has not stated any reason for the delay. But without considering the said aspect the learned Subordinate Judge, Namakkal allowed the petitions and condoned the delay in filing the appeals. According to him, the said order passed by the learned Subordinate Judge, is illegal and interference is necessary. In this regard, he relied upon the judgment of our Honourable Apex Court reported in (2015) 1 SCC 680 (H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Another) wherein our Honourable Apex Court has held as follows:

"The failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach."

7 At the out set, the said judgment reflects the principle, failure in not showing the due diligence in filing of appeals and in the absence of any valid explanation as gross negligence and lacks in bona fide has to be considered. If the

said parameters are proved, even if the delay is megar one, the same cannot be entertained.

8 Now, following the said principle in the case on hand, it is necessary to see the affidavit filed by the first respondent before the trial Court in supporting his claim. It is true, he has specifically stated in the affidavit as since the copy of the judgments are mingled with other case records, the appeals have not been filed within the stipulated period. In otherwise, he has not stated anything about the date of filing the copy application, date of receiving the copies. Therefore, I am of the opinion that the said reason stated by the first respondent before the trial Court is not having any valid reason.

9 In this occasion, it is necessary to see the back ground of the case pertains to these Civil Revision Petitions, which was tried before the trial Court. Before trial Court, first respondent in these revision petitions filed a suit in respect to the dispute arisen in the partnership firm. Unfortunately, the first respondent has lost his case and attempted to prove his case by way of filing appeals before the first appellate Court. Strictly speaking, admission of first appeal is a matter of right. In otherwise, till attaining the finality in all the above referred suit, both the petitioners and the respondents have not in a position to know their status in the partnership firm. So, deciding the appeal is very much necessary. In this occasion, it is necessary to see the judgment of our Honourable Apex Court reported in (2017) 12 SCC 840 [K.Subbarayudu and others Vs. Special Deputy Collector (Land Acquisition)] wherein, our Honourable Apex Court has held as follows:

11.The term "sufficient cause" is to receive liberal construction so as to advance substantial justice, when no negligence, inaction or want of bonafides is attributable to the appellants, the Court should adopt a justice-oriented approach in condoning the delay. In State of Nagaland V. Lipok Ao4, it was held as under : (SCC p. 757, para 8)

"8....Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can

be recorded in the peculiar circumstances of the case as sufficient."

10 Applying the said principles with the case in our hand, the first respondent herein filed applications before the Court supra only to condone the delay of 368, 425 and 368 days respectively, in fact the said delays are not too long one. Moreover, as already observed the back ground of the litigations between the petitioners and the respondents is in respect of the partnership firm, particularly, about the status of the first respondent. Therefore, the decision to be arrived in the appeal is helpful to either parties, not only for the petitioner. Hence, considering the extraordinary hard ship to which the first respondent would be put to, this Court is inclined to confirm the order passed by the learned Subordinate Judge, Namakkal.

11 Accordingly, all these civil Revision Petitions filed by the petitioners are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. If cost fixed by the learned Subordinate Judge is not paid so far the same has to be paid within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Subordinate Judge,
Namakkal.

Copy to
The Section Officer,
VR Section, High Court,
Madras.

+3cc to Mr.N.Manokaran, Advocate Sr.77514, 77513 & 77517
+1cc to Mr.C.Jagadish, Advocate Sr.77897

C.R.P. (PD)Nos.4923, 4924 and 4925 of 2014
and
M.P.Nos.1 of 2014

ssd[co]
srg 23/10/2019