

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP.(NPD).No.4461 of 2017andC.M.P.No.21052 of 2017

M/s.Mylapore Hindu Permanent Fund Ltd.,
 No.22, 24, South Mada Street, Mylapore,
 Chennai 600 004. ... Petitioner

.Vs.

1.M.Janakiraman,
 2.J.Alice,
 3.Joseph,
 4.Augustin Sugirtharaj,
 5.Ananya Sunitha
 All are residing at No.15A,
 Periyathambi Street,
 1st Lane, Royapuram, Chennai 13. ... Respondents

PRAYER: Civil Revision petition filed under Article 227 of Constitution of India against the order dated 06.10.2017 made in C.M.P.No.654/2017 in AS.Sr.46924/2016 on the file of the Principal City Civil Judge, Chennai.

For Petitioner : Mr.Mohanakrishnan
 for Mr.S.Janarthanan

For Respondents : Mr.A.Sasivel

ORDER

This revision petition has been filed against the order of the trial Court, dismissing the application filed under Section 149 of CPC to condone the delay of 233 days in payment of deficit court fee.

2.The brief facts of the case is as follows:

The revision petitioner has filed an appeal as against the decree and judgment passed in Suit No.1164 of 2009 before the Principal Judge, City Civil Court, Chennai, contending that the trial Court decreed the suit for lesser amount. When the appeal was presented on 19.10.2016 before the first appellate court, it was filed with deficit Court fee and therefore, it was returned for payment of deficit court fee and 10 days time was granted for representation. Thereafter, the appeal was represented with delay of 233 days along with correct fee. The reasons for delay was mentioned as demonitization introduced by the Government of India and due to which the appellant could not mobilize funds for payment of deficit court fee. However, the first appellate court dismissed the petition, against which the present Civil Revision Petition has been filed.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4.It is the contention of the learned counsel appearing for the revision petitioner that demonetization came to effect on 08.11.2016, at the relevant time, the revision petitioner could not mobilize the fund, thereby the delay occurred and deficit court fee paid along with condone delay petition. However, the trial Court simply rejected the petition.

5.The learned counsel appearing for the respondent would submit that the delay is deliberate and the reason assigned for the delay is not been proved.

6.On perusal of the order of the trial Court reveals that the appeal was filed within the time, against the decree and judgment passed in O.S.No.1164 of 2009. The fact that the appeal was filed in time is not in dispute. However, the appeal was presented with deficit court fee of Rs.1,18,530/- and the first appellate court granted 10 days time for representation with deficit Court fee. However, the deficit court was paid with delay. It is the contention of the revision petitioner that at the relevant time, demonetization came into effect and therefore, there was difficulty in mobilizing the funds. Admittedly demonetization came into effect on 08.11.2016, at the relevant time the appeal was also presented. It is a common knowledge that immediately after the effect of demonetization, it was difficult to mobilize the fund. Therefore, the first appellate court ought to have exercised liberal approach in extending the time for payment of deficit court fee, keeping in mind the fact that demonetization was in force at the relevant time of filing of appeal and the sufferings of the people at the relevant time. Therefore, I am of the view that the first appellate court has not exercised its discretion judicially.

N.SATHISH KUMAR, J.,

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Substantial right of the parties cannot be defeated on mere technicality. The ultimate powers of the court is to see that substantial right of the party is not affected. Hence, I am of the view that the order passed by the Principal Judge, City Civil Court, Chennai, in C.M.P.No.654/2017 in AS.Sr.46924/2016 is hereby set aside and the first appellate court shall take the appeal on file and decide the appeal on merits expeditiously, within a period of six months from the date of receipt of a copy of this order.

7.Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

23.04.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes / No

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To
The Principal Judge,
City Civil Court,
Chennai 104.

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