



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.1592 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

1.Muthulakshmi

2.Kalyana Sundaram

3.Minor Meena

(Minor 3rd petitioner is represented by
her mother and natural guardian /
the first petitioner)

...Petitioners/
Respondents/Respondents

Vs.

Viswakarma Iyakka Thozhilalar Sangam,
Kulasekarapattinam Village,
Tiruchendur Taluk,
through its President,
E.Ponniah Asari,
S/o. Eenamuthu Asari

...Respondent/
Petitioner/Appellant

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.138 of 2011 in unnumbered A.S.No. 2011 dated 30.01.2012, on the file of the Sub Court, Tuticorin.

For Petitioners : Mr.S.Kumar
For Respondent : Mr.R.Vijayakumar

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below allowing the application filed under Section 5 of the Limitation Act to condone the delay of 246 days in filing the appeal.

2. The respondent / Labour Union had filed a suit against the petitioners seeking for the relief of ejectment and for recovery of arrears of rent. The suit came to be dismissed by judgment and decree dated 09.04.2010. As against the same, the appeal came to be filed before the Sub Court, Thoothukudi with a delay of 246 days. The Court below had allowed the application on payment of cost and ~~aggravated by the same,~~ the present Civil Revision Petition has been filed by the petitioners.



3. The learned counsel appearing for the petitioners submitted that the only reason that was assigned for the delay was that the deponent, who was the President of the Labour Union was suffering from severe back pain for more than a year and therefore, he was taking treatment which prevented him from following up the case and filing the appeal. The learned counsel submitted that except for the *ipse dixit* of the President of the Union, there are absolutely no supporting materials to prove that he was infact suffering from such a back pain and he was taking treatment. The learned counsel further submitted that the Court below after finding that there was no evidence from the side of the respondent regarding the ailment and treatment, has proceeded to allow the application by imposing a cost of Rs.500/-.

4. Per contra, the learned counsel appearing on behalf of the respondent submitted that a substantial right of the labour union is involved in this case, since the respondent is not in possession of the property and petitioners are squatting in the property, belonging to the Union without paying any rent. Therefore, the respondent will have to be given an opportunity to contest the appeal on merits. The learned counsel submitted that the delay cannot be put against the respondent and the same should not defeat the substantial rights of the respondent / Union.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The Court below has allowed the application mainly on the ground that the respondent has a statutory right to work out the appeal remedy and it should not be defeated by dismissing the application filed for condoning the delay. The Court below did not find that the delay was substantial and it found that the same can be condoned by imposing cost. This discretion used by the Court below, in the considered view of this Court, is not perverse or illegal and this Court does not find any ground to interfere with the same. After all the petitioners are going to get sufficient opportunity to contest the appeal on merits.

7. In the result, the fair and final order passed by the Court below in I.A.No.138 of 2011, dated 30.01.2012, is hereby affirmed and the Court below is directed to dispose of the appeal within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //



To

1.The Sub Court, Tuticorin.

+1CC TO MR.R.VIJAYAKUMAR, Advocate Sr. No.97114

+1CC TO MR.S.KUMAR, Advocate Sr. No. 97276

CRP. (MD) .No.1592 of 2012 (PD)

08.11.2019

SCR (CO)

TR (22.11.2019) 3P 4C