

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 28.01.2019
PRONOUNCED ON : 12.04.2019

WEB COPY

CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.120 of 2019 (NPD)

1.V.Subramanian
2.Mayandi
3.Vellaichamy

... Petitioners / Petitioners/
Appellants/ Plaintiffs

Vs.

1.Madasamy
2.Muniyandi
3.Chinnaraj
4.Thangaiah
5.Jayaraj
6.Balakrishnan
7.Thoondi

... Respondents / Respondents/
Respondents / Defendants

PRAYER: Petition filed under Section 115 of C.P.C., against the fair and decretal order, dated 05.09.2018, passed in I.A.No.165 of 2016 in A.S.No.21 of 2014 by the Subordinate Court, Sankarankovil.

For petitioners : Mr.R.J.Karthick

For respondents : Mr.M.Thirunavukkarasu

ORDER

This petition has been filed by the petitioners / appellants challenging the order, dated 05.09.2018, passed by the first appellate Court in I.A.No.165 of 2016 in A.S.No.21 of 2014, whereby and whereunder the petition filed by the petitioners / appellants seeking condonation of delay of 559 days in filing a petition to set aside the order dismissing the appeal for default.

2. It is seen that the petitioners herein as plaintiffs filed a suit in O.S.No.220 of 2010 for permanent injunction against the respondents herein. After trial, the trial Court dismissed the suit on 25.02.2014. Aggrieved by the same, the petitioners filed the appeal suit in A.S.No.21 of 2014. Due to non appearance of the petitioners/plaintiffs, the appeal suit was dismissed on 18.11.2014. For filing a petition to set aside the said order, there occurred a delay of 559 days. Seeking to condone the said delay, the petitioners/plaintiffs filed I.A.No.165 of 2016. The first appellate Court has dismissed the said petition holding that the reason assigned by the petitioners/plaintiffs is not only unreliable



but also unacceptable. Aggrieved by the same, the petitioners/plaintiffs filed this petition.

3. The learned counsel appearing for the petitioners/plaintiffs submitted that the dismissal of the appeal has not been properly intimated to the petitioners / plaintiffs by their counsel and therefore, the delay of 559 days had occurred and the petitioners / plaintiffs have a fair chance of success in the appeal and therefore, the Court below ought to have liberally considered the said petition and allowed the same. But, the Court below erroneously dismissed the said petition. Therefore, this Court may set aside the order of the Court below and condone the delay of 559 days in filing a petition to set aside the order dated 18.11.2014. Thus, he prayed to allow this petition.

4. The learned counsel appearing for the respondents/defendants submitted that the Court below adjourned the case for several hearings at the request of the learned counsel for the petitioners/appellants and finally, on 18.11.2014, the learned counsel for the petitioners/appellants reported no instructions and the petitioners also did not appear before the Court and therefore, the Court below dismissed the appeal for default. He would further submit that the petitioners/appellants have not explained each day of delay and therefore, the Court below dismissed the petition for condonation of delay and the said order need not be interfered with. Thus, he prayed to dismiss this revision petition.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. It is a settled principles of law that the condonation of delay is a matter of discretion of the Court. There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. The length of delay is not material, but cogent and convincing reason must be assigned. Even the delay of long range can be condoned if the explanation is satisfactory.

7. The only reason stated by the petitioners / appellants for condoning the enormous days of delay is that the letter stated to be sent by their counsel about the listing of the matter before the Court below on 18.11.2014, has not been reached to them and hence, they were under the impression that the appeal is pending and they could not appear before the Court on 18.11.2014 and the absence of the petitioners on 18.11.2014 before the Court below is neither wilful nor wanton. In fact, the petitioners/appellants have not explained each and every days of delay. They have only stated the reason for their non appearance on 18.11.2014, which is not sufficient condoning the enormous days of delay.

8. Though the petitioners have stated in the petition filed before the Court below that they came to know about the dismissal of



the appeal only two days before filing of the petition for condonation of delay, the third petitioner, who was examined as PW1, candidly admitted in his evidence that he met his counsel after Deepavali Festival of the year 2014. Deepavali Festival of the year 2014 was held on 22.10.2014. It is seen that the appeal was adjourned for several hearings ie., on 14.10.2014, 05.11.2014, 10.11.2014, and finally on 18.11.2014 it was dismissed for the non appearance of the petitioners/appellants. In the event, the third petitioner / PW1 met his counsel immediately after Deepavali Festival, the petitioners' counsel definitely informed about listing of the appeal for arguments or about dismissal of the appeal. The third petitioner / PW1 has further admitted that before filing the petition for condonation of delay, they lodged a complaint against the respondents herein in the Girivalamvanthanalloor Police Station and the respondents herein informed them about the dismissal of the appeal by the Court below, which would clearly show that the petitioners already knew about the dismissal of the appeal by the Court below and suppressing the same, they have stated in the petition as if they came to know about the dismissal of the appeal only two days before filing of the petition for condonation of delay. The petitioners / appellants have not approached the Court with clean hands. This Court does not find any reason to interfere with the order passed by the Court below.

9. In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Subordinate Judge,
Sankarankovil.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate in SR-60625

+1 CC to M/s.R.J.KARTHICK, Advocate in SR-61131

C.R.P.(MD)No.120 of 2019 (NPD)
12.04.2019

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PK/25.04.2019 : 3P/4C