



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.06.2019

PRONOUNCED ON : 28.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.399 of 2019 (NPD)

WEB COPY

M.Palanisamy

... Petitioner/Petitioner/
Appellant

Vs.

Jeyakumar (died)

1.Annakodi

2.Prabhakaran

3.Prakash

4.The District Collector,
Karur District,
Karur.

5.The Revenue Divisional Officer,
Kulithalai,
Karur District.

6.The Tahsildar,
Krishnarayapuram Taluk,
Karur District.

.. Respondents /
Respondents/Respondents

PRAYER: Petition filed under Section 115 of C.P.C., against the fair and decretal order, dated 11.10.2018, passed in I.A.No.22 of 2018 in A.S.SR.No.1678 of 2018 by the Subordinate Court, Kulithalai.

For petitioner : Mr.S.Deenadhayan

For respondents 1 to 3 : Mr.V.Sitharanjandass

For respondents 4 to 6 : Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader

ORDER

This Civil Revision Petition has been filed by the revision petitioner/ 6th defendant, as against the order, dated 11.10.2018, passed in I.A.No.22 of 2018 in A.S.SR.No.1678 of 2018, whereby and



whereunder the Court below dismissed the petition filed by the petitioner/appellant seeking condonation of delay of 387 days in filing the appeal.

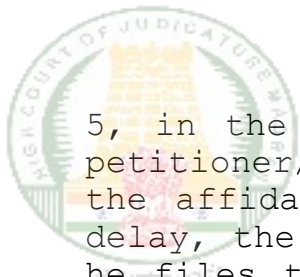
2. The first respondent herein and her husband by name Jeyakumar have filed the suit in O.S.No.213 of 2004 for permanent injunction. The petitioner is the 6th defendant in the suit. The trial Court, after trial, has decreed the suit as prayed for. Aggrieved by the same, the petitioner /6th defendant and defendants 4 and 5 have presented an appeal before the first appellate Court with a delay of 387 days. For condoning the said delay, the petitioner/6th respondent has filed I.A.No.22 of 2018. The Court below, after hearing both sides, has dismissed the petition for condonation of delay. Challenging the same, the petitioner/6th defendant has filed this Civil Revision Petition.

3. The learned counsel for the petitioner/6th defendant submitted that though the petitioner/6th defendant has stated that due to treatment for accidental injuries, the petitioner/6th defendant could not appear before the trial Court and could not file the appeal in time, the Court below has erroneously dismissed the petition for condonation of delay. He would further submit that after filing the petition for condonation of delay, the petitioner/6th defendant has filed a memo by which he produced a discharge summary issued by the hospital authority and the Court below also received the same. But, the Court below, without looking into the same, has erroneously dismissed the petition for condonation of delay. Thus, he prayed to allow this petition.

4. The learned counsel appearing for the respondents in unison submitted that though the appeal suit was sought to be filed by three persons viz., the petitioner/6th defendant and the defendant 4 and 5, the application for condonation of delay has been filed by only one person ie., the petitioner/6th defendant. He would further submit that the suit was disposed of on 04.01.2017, but the petitioner/6th defendant has stated in the affidavit filed in support of the petition for condonation of delay that since the petitioner/6th defendant was taking treatment for the accident held on 09.04.2015, he could not file the appeal in time. The reason stated by the petitioner/6th defendant cannot be accepted. The Court below, after considering the above aspects, has rightly dismissed the petition filed by the petitioner/6th defendant. This Court need not interfere with the order passed by the Court below. Thus, he prayed to dismiss this Revision Petition.

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

6. A perusal of record shows that though the appeal was sought to be filed by the petitioner/6th defendant and the defendants 4 and



5, in the petition for condonation of delay only the name of the petitioner/6th defendant alone has been mentioned as petitioner. In the affidavit filed in support of the petition for condonation of delay, the petitioner/6th defendant does not even aver as to whether he files that affidavit on behalf of the defendants 4 and 5 also. The reason for the delay on the part of the defendants 4 and 5 also has not been averred in the petition.

7. A perusal of the judgment passed in the suit would show that the suit itself was dismissed in respect of the 4th defendant. It is not known as to how he is aggrieved by the judgment in the suit and as to why he sought to file the appeal.

8. The only reason stated by the petitioner/6th defendant for condoning the delay of 387 days in filing the appeal is that since he has been taking treatment for the accident held on 09.04.2015, he could not participate in the suit proceedings before the Court below and file the appeal in time. The suit has been disposed of 04.01.2017. The petitioner/6th defendant has not averred the specific period during which he took treatment. It is unbelievable to hear that for the accident held on 09.04.2015, he took treatment for these long years. The petitioner/6th defendant could have contacted his counsel over phone. The reason stated by the petitioner/6th defendant is also not sufficient for condoning the delay of 387 days in filing the appeal.

9. It is stated by the learned counsel for the petitioner/6th defendant that in order to substantiate the contention that the petitioner/6th defendant took treatment in the hospital, he has produced medical summary issued by the hospital authority before the Court below by way of filing a memo. It is not known under what procedure he has filed such kind of memo and produced the discharge summary before the Court below. Admittedly, the petitioner/6th defendant has not filed any oral and documentary evidence before the Court below in order to substantiate his contention. Therefore, such contention cannot be accepted. This Court does not find any reason to interfere with the order passed by the Court below.

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

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Subordinate Judge,
Kulithalai.

+1 CC to Mr.V. SITHARANJANDAS, Advocate SR-83735.

+1 CC to Mr.S.DEENADHAYALAN, Advocate SR-84294.

**Order made in
C.R.P. (MD) No.399 of 2019 (PD)
28.08.2019**

CS (17.09.2019) 4P 4C