



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 18.09.2019

Orders Pronounced on : 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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C.R.P (MD)No.461 of 2019

and

C.M.P. (MD)No.2324 of 2019

Mohana ...Petitioners / 1st respondent /
1st respondent

Vs.

Baby Saroja (Died) .. Nil / 1st petitioner / 1st appellant

1.S.Chittibabu

2.S.Govindaraj ... Respondents 1 and 2 /Petitioners 2 and 3 /
Appellants 2 and 3

3.Punitha

4.Bapu

5.P.S.K.Amanulla

6.Palanivelu

7.Madanakannan

8.Rajaram

9.Avudayammal

10.Arockiam

11.B.Raja Hamsam

12.R.Leelavathy

13.S.Chandra

14.S.Gajalakshmi ... Respondents 3 to 14 / Respondents 2 to 13 /
Respondents 2 to 13

PRAYER: Civil Revision Petition is filed, under Under Article 227 of the Constitution of India, against the fair and decretal order dated 07.07.2018 passed in I.A.No.192 of 2015 in A.S.No.126 of 2008, on the file of the learned Principal District Judge, Tiruchirappalli.



For Petitioner : Mr.A.Arumugam
for M/s.Ajmal Associates
For R1 and R2 : Mr.Raguvaran Gopalan

O R D E R

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The present Civil Revision Petition has been filed against the fair and decretal order, dated 07.07.2018 passed in I.A.No.192 of 2015 in A.S.No.126 of 2008, on the file of the learned Principal District Judge, Tiruchirappalli. The said application was filed to condone the delay of 1829 days in filing the petition for re-admission of the appeal, which was dismissed for default on 11.02.2009. The Court below allowed the said application on the ground of old age of the petitioner and for other reasons stated in the application.

2.The learned counsel for the revision petitioner submitted that the reasons given for condonation of huge delay of 1829 days are false and it is insufficient to allow the said application. He would further submit that though they claimed that due to the illness of the original petitioner Baby Saroja, she was not in a position to approach her lawyer, no medical certificate was produced by the respondents 1 and 2 and that the delay has not been properly explained. Hence, he prayed for setting aside the order of the Trial Judge.

3.In support of his contention, the learned counsel appearing for the revision petitioner referred a Judgment of this Court in **A.NATESAN v. P.ERULAPPAN** reported in **2013 (3) MWN (Civil) 58**, wherein this Court has observed as follows:-

"19.It is also pertinent to note that as per the dictum of the Honourable Apex Court **Lanka Venkateswarlu (D) by L.Rs. v. State of A.P. And others**, 2011 (5) MLJ 167, once a valuable right has accrued in favour on one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the Applicant particularly, when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. Considering the dictum laid down in the case of **Balwant Singh (Dead) V. Jagdish Singh and others**, 2010 (8) SCC 685, because of condonation of delay, the right of the Petitioner/Plaintiff was affected.

Applying the dictum of **Balwant Singh's case** and also the



Lanka **Venkatesarlu's case**, I am of the view that the order of the Trial Court is unsustainable."

4. On the other hand, the learned counsel for the respondents 1 and 2 would submit that trial Judge has rightly allowed the application for condonation of delay by exercising his discretionary power and by following the liberal approach and that the same does not require any interference and hence, this revision is to be dismissed.

5. Heard the learned counsel appearing on either side and perused the records.

6. On perusal of the application filed for condonation of delay, this Court found that no proper reason was assigned by the respondents 1 and 2. It is stated that they have approached their former counsel and taken back all the papers for consultation with regard to the grounds on which the suit was dismissed by the trial Court. Thereafter, they approached their well-wisher and his close associates, an advocate of Madras High Court in the first week of February, 2009. However, the appeal was dismissed on 11.02.2009 due to the non appearance of the counsel. Since they approached the counsel at Madras High Court, they were not able to hand over the papers to his lawyer to continue further. Further, they stated that due to the illness of the original petitioner Baby Saroja, she could not meet his former advocate. Thereafter, they came to know that the former advocate suddenly passed away in the month of August, 2013. This is the reason they have stated to condone the delay in re-admission of the appeal. Apart from that no other reasons were stated. There is an inordinate delay of 1829 days, that is more than five years. In such a case, the respondents 1 and 2 are bound to explain the each and every day's delay. But in the present case, though the deceased petitioner was 83 years old at the time of filing the application, she has not produced any record to show about her ailment before the Court below. Merely she has stated that in the first week of February, 2009, she contacted her counsel at Madras High Court and thereafter, she contacted his former lawyer during August, 2013 and she was informed about the death of her lawyer, however, she has not explained as to why she has not contacted her lawyer after the first week of February, 2009 and that the delay of four years period between 2009 and 2013 also was not explained. Even she came to know about the death of her lawyer in the month of August, 2013, even after that also, she never took any steps and she only filed the present petition to condone the delay by way of an affidavit dated 17.03.2014. The said delay also not explained.

7. Under these circumstances, it is really surprise as to how the Court below satisfied with the reasons stated in the application



for condoning the delay of 1829 days and allowed the application. The Court below ought not to have allowed the application, since the respondents 1 and 2 have not explained each and every day's delay, which they are supposed to explain.

8.In such circumstances, this Court is of the view that the Court below has not considered those aspects in proper perspective. Hence, the fair and decreetal order passed by the learned Principal District Judge, Tiruchirappalli is unsustainable and the same is liable to be set aside. Hence, the fair and decreetal order dated 07.07.2018 passed in I.A.No.192 of 2015 in A.S.No.126 of 2008, on the file Principal District Court, Tiruchirappalli, is hereby set aside.

9.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/ True Copy /

Sub Assistant Registrar(CS-)

To

The Principal District Judge,
Tiruchirappalli.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate
(SR-88792[F] dated 24/09/2019)

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-88614[F] dated 23/09/2019)

C.R.P (MD) No.461 of 2019
20.09.2019

rj2
ES/01.10.2019/4P/4C