



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 22.11.2019

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 827 OF 2019

AND

CRL. M.P. (MD) NO. 9580 OF 2019

Vellaichamy

.. Petitioner/Respondent

- Vs -

1. P.Mohamed Essa (Dead)
2. Sheikh Abdul Khadar
3. Sirajudeen
4. Sabina Begum

.. Respondents/Petitioners 1 to 4

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 16.08.2019, passed by the Principal District Court, Ramanathapuram, in Crl. M.P. No.159/2018.

For Petitioner	: Mr. S.Anand Chandrasekar
For Respondents	: Mr. N.Mohideen Basha, for
	Mr. Yasar Arafath for RR-2 & 3
	R-1 - Died
	R-4 - Service Awaited

ORDER

The present revision has been filed against the order, condoning the delay, in filing the review petition, passed by the Prl. District Court, Ramanathapuram.

2. It is not in dispute that a case u/s 138 of the Negotiable Instruments Act was initiated by the respondents herein against the petitioner herein. It is the case of the respondents herein that after summons, however, the complainant was not able to appear before the court below, as he was medically indisposed and, therefore, he could not prosecute the case, inspite of the conditional orders directing his appearance, and, therefore, the complaint filed by him was dismissed. The complainant approached the appellate court to file the appeal, however with a delay of 479 days and towards the same filed the present petition for condoning the said delay, citing medical indisposition, which was neither wilful nor wanton. The appellate court, after giving opportunity to the complainant to file the appeal, condoned the delay in filing the appeal by directing the complainant to pay a cost of Rs.3,000/- to the petitioner



herein. Aggrieved by the said order, the petitioner is before this Court by filing the present revision.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record as also the order passed by the appellate court.

4. The facts are not in dispute. The only issue that is canvassed is that the delay ought not to have been condoned as the complainant was not diligent enough in prosecuting the case and, therefore, his attitude cannot be put against the petitioner herein. Further, it reveals from the order of the court below that the 1st respondent, who is since dead, was aged above 80 years and was medically indisposed and therefore was not able to meet his lawyer and give him the necessary instructions to file the appeal. However, after his demise, the miscellaneous petition was filed for condoning the delay in filing the appeal.

5. Though it is settled law that the non-diligent attitude of one party should not be detriment to the other party in a matter relating to limitation, however, it is equally settled law that substantial justice needs to be done to meet the ends of justice. The fact that the 1st respondent, who is since dead, was aged above 80 years is not in dispute. Medical indisposition due to age is a common phenomenon and the family would always cater to the ailing at that relevant point of time than attending to the court proceedings/filing appeals. However, that alone cannot be a ground to condone the delay. However, what is to be borne in mind is that the initiator of the appeal is the 1st respondent, who is since dead and the other respondents have taken up the matter and are prosecuting the same. In such a scenario, the trial court has given cogent and convincing reasons for condoning the delay. Though prejudice should not be caused to the other party due to the act of the complainant in filing the petition with delay, however, where the delay is just and acceptable, it is always within the domain of the court to dispense substantial justice to all the parties concerned in the lis. The order of the appellate court clearly portrays application of mind and in the considered opinion of this Court, the order passed by the court below does not suffer from any infirmity.

6. For the reasons aforesaid, this Court does not find any reason to interfere with the order passed by the court below and, accordingly, this revision petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (writs)

// True Copy //



To

The Principal District Court
Ramanathapuram.

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-100861[F] dated
25/11/2019)

+1 CC to MR.K.YASAR ARAFATH, Advocate (SR-101018[F] dated
25/11/2019)

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MK (09.12.2019) 3P 4C