



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP (PD) (MD) No.2527 of 2018

WEB COPY

G.P.Sharmilan

... Petitioner
versus

1. Sibiyam (died)
2. Sudhamohan
3. Sulochana Bai
4. Saji Jacob
5. Sherly
6. Smiley Rahale

(R3 to R6 brought on record

vide order dated 24.10.2018 in

CMP(MD)Nos.8153 to 8155 of 2018) ... Respondents

Civil Revision Petition filed under Section 115 of C.P.C. against the order dated 01.07.2016 made in I.A.No.157 of 2014 in AS (SR)No.4148 of 2014 on the file of the District Court, Kanyakumari at Nagercoil.

For Petitioner : Mr.S.Ramakrishnan

ORDER

This Civil Revision Petition has been filed against the order dated 01.07.2016 made in I.A.No.157 of 2014 in AS(SR)No.4148 of 2014 on the file of the District Court, Kanyakumari at Nagercoil.

2. I.A.No.157 of 2014 was filed by the revision petitioner before the Court to condone the delay of 52 days in filing the appeal in AS(SR)No.4148 of 2014.

3. By order dated 01.07.2016, the Court below, after hearing both sides, dismissed the said application stating that the appellant/petitioner filed the appeal with the delay of 52 days with an intention to protract the proceedings and to prevent the decree holder to execute the decree. Aggrieved over the same, the present Civil Revision Petition has been filed.

4. The learned counsel appearing for the revision petitioner submitted that the value of the appeal is Rs.4,00,100/-, for which, the revision petitioner has to pay a sum of Rs.30,075.50p as Court Fee. Further, at the time of filing the appeal suit, there was a shortage in availability of stamp papers and also for mobilizing the funds, the delay had occurred. However, the appeal was filed on 30.07.2014 along with the full Court Fee. However, the Court below, without considering the same, has wrongly come to the conclusion stating that the appellant has filed the appeal with the delay of 52 days with an intention to protract the proceedings and to prevent the decree holder to execute the decree. Therefore, he pleaded to

set aside the order passed by the Court below.

5. The first respondent herein died 15.03.2018. Hence, the legal heirs of the deceased first respondent were impleaded as respondents 3 to 6, against whom, notice was ordered and the same was served. Though their names have been printed in the cause list, there is no representation on behalf of them. The second respondent also remained ex parte before the Court below.

6. On perusal of the records, it is seen that the reason stated by the revision petitioner is that the delay had occurred due to the non availability of stamp papers to the extent of Rs.30,075/- at the time of filing the appeal and inability on the part of the petitioner in mobilizing the funds. Subsequently, the revision petitioner paid the entire Court fee. Even after the payment of entire Court fee, still the Court below has come to the conclusion that the petition has been filed with 52 days delay only with an intention to protract the proceeding and to prevent the decree-holder from executing the decree, and consequently, dismissed the application for condonation of delay. Hence, the dismissal of the application to condone the delay by the Court below even after payment of the entire Court fee is not proper. The delay is also only for 52 days in preferring the Appeal and the petitioner has explained the reason for the delay in preferring the Appeal by stating that there was shortage in stamp paper and non-availability of sufficient fund with the revision petitioner. The reasons stated by the revision petitioner appears to be genuine and the Court below ought to have considered the reasons stated by the petitioner and allowed the application, however, dismissed the same. Therefore, this Court is of the view that the order passed by the Court below is not proper and liable to be set aside.

7. Accordingly, this Civil Revision Petition is allowed. The order dated 01.07.2016 made in I.A.No.157 of 2014 in AS(SR)No.4148 of 2014 on the file of the District Court, Kanyakumari at Nagercoil is hereby set aside. The District Court, Kanyakumari at Nagercoil is directed to number the appeal. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ogy

To

1. The District Judge,
Kanyakumari at Nagercoil.

+1 CC to M/s.S.RAMAKRISHNAN, Advocate (SR-98218[F] dated 14/11/2019

CRP (PD) (MD) No.2527 of 2018

SMA/08/01/2020/2P/3C

<https://hcservices.ecourts.gov.in/hcservices/>