



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.485 of 2011 (NPD)

and

M.P. (MD) .No.1 of 2011

S.Muthulakshmi

.. Petitioner /Petitioner
Appellant

Vs.

P.Selvaraj

.. Respondent / Respondent
Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the order, dated 23.03.2010, passed in I.A.No.104 of 2009 in unnumbered A.S.No.nil of 2009 by the Principal District Judge, Dindigul.

For petitioner : Mr.N.Tamilmani

For respondent : Mr.R.Govindarajan

ORDER

This petition has been filed by the petitioner/plaintiff as against the order dated 23.03.2010, passed by the first appellate Court, whereby and whereunder the first appellate Court dismissed the petition filed by the petitioner seeking to condone the delay of 787 days in filing appeal.

2. It is seen that after the death of the petitioner's / defendant's husband, the respondent / plaintiff had filed a suit in O.S.No.26 of 2005 against the petitioner / defendant for recovery of money received by her husband by executing a pro-note. After trial, the suit was decreed and the trial Court directed the petitioner/defendant to pay the decretal amount within one year. Aggrieved by that order, the petitioner/ defendant presented an appeal. For filing the said appeal, there occurred a delay of 787 days. In order to condone the delay of 787 days, the petitioner/defendant filed I.A.No.104 of 2009. The Court below dismissed the said petition holding that the reason assigned by the petitioner/defendant is not acceptable. Aggrieved by the same, the petitioner has filed this petition.



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

4. It is settled 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 and acceptability of explanation is important. Even the delay of long range can be condoned if the explanation is satisfactory.

5. In this case, the reasons assigned by the petitioner for condoning the delay of 787 days in filing the appeal is that from one month prior to the date of decree, she had been suffering from jaundice and taking country treatment and that she became weak and bedridden and she, being an illiterate and villager, failed to instruct her counsel to file appeal and thus, the delay had occurred. At the time of filing the petition for condonation of delay, the petitioner/ defendant was aged about 69 years. The petitioner/ defendant herself was examined as PW1 in the petition. In her evidence, she has stated about the reasons for the delay. It was not refuted by the respondent. Considering the facts and circumstances of the case, the first appellate Court could have liberally considered the petition and granted an opportunity to the petitioner to put forth her case. But, it has failed to do so. Hence, this Court is of the view that ends of justice would be met if a direction is given to the petitioner to deposit the decretal amount within a period of one month from the date of receipt of a copy of this order.

6. In view of the above, this Civil Revision Petition is allowed and the impugned order is set aside and the delay of 787 days is condoned subject to the deposit of decretal amount in O.S.No.26 of 2005 to the credit of O.S.No.26 of 2005 on the file of the Subordinate Court, Palani, within a period of one month from the date of receipt of a copy of this order, failing which this petition shall stand dismissed automatically without any further reference to this Court. On production of receipt of such deposit within the time stipulated above, the first appellate Court is directed to number the appeal and dispose of the same on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //



To

1.The Principal District Judge,
Dindigul.

2.The Subordinate Judge,
Palani.

+1cc to Mr.R.Govindaraj, Advocate, SR.No.59376

+1cc to Mr.N.Tamilmani, Advocate, SR.No.59207

C.R.P (MD) No.485 of 2011 (NPD)
05.04.2019

GCG

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