



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (NPD) (MD) No.720 of 2013

and

M.P. (MD) No.1 of 2013

Mohanram

: Petitioner/Petitioner/Appellant

.. Vs ..

Devadoss

: Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 115 of Civil Procedure Code, praying to set aside the order made in I.A.No.17 of 2012 in unnumbered appeal of 2012 on the file of Principal Sub Judge, Kumbakonam, dated 13.03.2013, by allowing this revision.

For Petitioner

: Mr.R.Sundar

For Respondent

: Mr.M.R.S.Prabhu

for Mr.V.K.Vijayaraghavan

- - - - -

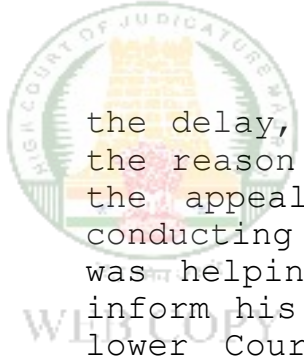
ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal Sub Judge, Kumbakonam in I.A.No.17 of 2012 in unnumbered appeal.

2.The revision petitioner is the defendant in the suit in O.S.No.20 of 2008 on the file of the Principal District Munsif Court, Valanginan. The suit is for recovery of a sum of Rs.67,686/-. It is stated that the suit was decreed on 28.06.2011 and the petitioner's counsel also obtained a judgment copy on 14.07.2011. Though an appeal ought to have been filed on or before 12.08.2011, the same was preferred only with a delay of 214 days. Hence, along with the appeal, the petitioner filed a petition in I.A.No.17 of 2012 in unnumbered appeal to condone the delay of 214 days in preferring the appeal and the above said petition was dismissed by the lower Court. Aggrieved by the same, the defendant in the suit has preferred the above revision petition.

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

3.In the affidavit filed in support of the petition to condone



the delay, the petitioner has stated that due to ill-health and for the reason that the defendant was taking treatment till July, 2011, the appeal could not be presented within the time. Even for conducting the suit, the petitioner stated that it was his wife who was helping him in the Court proceedings and that he could not inform his counsel well in advance for preferring the appeal. The lower Court though accepted the reason that the petitioner was taking treatment for his illness, it was found that the petitioner had not given proper explanation about the illness which was proved to be after the date for filing the appeal. The trial Court also found that the petitioner received notice in the execution proceedings and that the appeal itself has been filed only to prevent the decree holder to execute the decree by attaching the properties of the revision petitioner.

4. From the perusal of the petition and the sequence of events, the fact that the petitioner was suffering from illness is not in dispute. Though the explanation before July, 2011 was not convincing, the fact that the petitioner could not contact his Advocate and give instructions for filing appeal when he was in hospital is probable and the petitioner's explanation cannot be rejected. In a petition filed to condone the delay under Section 5 of the Limitation Act, sufficient cause has to be judged from the circumstances and the conduct of the parties. This Court find the reasons given by the revision petitioner before the lower Court are probable and convincing. In a situation like this, some kind of leniency can be shown especially when there is no positive evidence to show that the petitioner has abandoned his right or that the petitioner was negligent in preferring the appeal in time. Though the delay is inordinate and some amount of inconvenience is also caused to the respondent, this Court is inclined to condone the delay and entertain this Revision Petition subject to terms. Hence, this Civil Revision Petition is allowed and the order passed by the learned Principal Sub Judge in I.A.No.17 of 2012 is set aside. I.A.No.17 of 2012 on the file of the Principal Sub Judge, Kumbakonam, stands allowed on condition that the revision petitioner pay a sum of Rs.5,000/- (Rupees five thousand only) to the respondent by way of Demand Draft within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



WEB COPY

To

The Principal Sub Judge,
Kumbakonam.

+1 CC to M/s.R.SUNDAR, Advocate (SR-48634[F] dated 21/02/2019)

C.R.P (PD) (MD) No.720 of 2013

20.02.2019

DS/ /SAR- (09.04.2019) 3P 3C