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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

REVIEW APPLICATION NO.103 OF 2020

AGAINST

C.M.P.NO.882 OF 2020

AND

CMP NO.12400 OF 2020

1. The State of Tamil Nadu rep. by
The District Collector,
Nagapattinam District,
Nagapattinam.

2. The Tahsildar,
Nagapattinam Taluk,
Nagapattinam District.

... Review Petitioners

-Vs.-

M.K.M.Ahmed Kabir Maraicar

... Respondent

Review Application has been filed under Order XLVII Rule 1 r/w Section 114 of the Civil Procedure Code, against the order of this Court dated 14.09.2020 made in C.M.P.No.882 of 2020 in S.A.Sr.No.95002 of 2019.

C.M.P.No.882 of 2020:-

filed to condone the delay of 1121 days in filing the Second Appeal filed under section 100 of the CPC against the Decree and Judgment passed by the Subordinate Judge, Nagapattinam dated 18.03.2016 made in A.S.No.11 of 2014 reversing the Judgment and decree passed by the District Minsif, Nagapattinam, dated 13.02.2014 made in O.S.No.30 of 2010.

For Review Petitioners : Mr.Y.T.Aravind Gosh,
Additional Government Pleader

For Respondent : Mr.P.Dinesh Kumar



O R D E R

The review is sought for of the order dated 14.09.2020 made in C.M.P.No.882 of 2020 refusing to condone the delay of 1121 days in filing the appeal against the judgment and decree in A.S.No.11 of 2014 on the file of the Sub-Court, Nagapattinam.

2. According to the affidavit filed in support of the application for condonation of delay, the delay was caused due to the assembly election which took place during May 2016 and cyclone "Nada" which made a land fall in Nagapattinam during December 2016. I had refused to accept the said reasons as sufficient cause for condonation of delay, since I found from the records that the copy application for certified copies of the judgment and decree of the appellate court was made only on 05.02.2019 i.e., nearly after a delay of 1054 days. The reasons attributed for the delay did not, in my considered opinion, constitute sufficient cause, because the filing of copy application and obtaining of certified copies are purely the duties of the Government Pleader's office and not the Tahsildar office.

3. In this Review Application, it is now claimed that the copy application was in fact made as early as on 24.05.2017 in C.A.No.1309 of 2017 and the copies were in fact made available to the learned Government Pleader on 29.05.2017. The copies that were forwarded by the Government Pleader to the Office of Tahsildar, Nagapattinam were actually mis-placed in some other file. Therefore, fresh copy application seems to have been made in the year 2019 and the Second Appeal was filed along with the copies obtained in the year 2019. Terming this as Discovery of new fact which was not within the knowledge of the petitioners at the time of filing of the review and the same would constitute a ground for review under Order XLVII Rule 1 Sub-Rule 1 of the Code of Civil Procedure, the learned Government Pleader would seek indulgence of this court to review the order.

4. Mr.P.Dinesh Kumar, learned counsel appearing for the respondent would vehemently contend that the fact that the copy application was filed in the year 2017 and the copy of the judgment was obtained, even if true, will still not afford a reason or sufficient cause for delay, since the copy application was made after a delay of an year from the date of the judgment. He would also contend that the said fact would not come within the discovery of important material which was not within the knowledge of the petitioner.

5. I have considered the rival submissions.



6. The copy of the judgment that was obtained in the year 2017 has been produced. It is seen therefrom that the copy application was made on 24.05.2017 and the same was issued on 29.05.2017. It is now claimed that the said copy was mis-placed in some other file and therefore, the appeal could not be filed in time on the basis of the said copy. Thereafter, only in the year 2019, fresh copy application was made and copy was obtained from the court. This reason, in my considered opinion, amounts to discovery of material fact which was not within the knowledge of the applicants.

7. It is seen from the affidavits filed in support of the application for condonation of delay and the review petition, that the Nagapattinam District was affected by cyclone "Nada", which made a land fall in the year December 2016 and caused vast damage. Subsequently, also in the year 2017 and 2019 there were natural disasters like Gaja Cyclone. Therefore there is a possibility of the petitioner viz., Tahsildar, Nagapattinam losing track of the appeal.

8. This court and the Hon'ble Supreme Court have repeatedly held that the Court must be liberal in condonation of delay, unless it could be stated that the delay is actuated with malafide or with a view to make financial gain. It is not the case here. Hence, this review application is allowed and the order dated 14.09.2020 is recalled. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dsa/kkn

To

1. The Subordinate Judge,
Nagapattinam.
2. The District Munsif,
Nagapattinam.
3. The District Collector,
Nagapattinam District.



4. The Tahsildar,
Nagapattinam Taluk,
Nagapattinam District.

+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.24489

+1cc to the Special Government Pleader, S.R.No.24435

Review Application No.103 of 2020
against C.M.P.No.882 of 2020
and CMP No.12400 of 2020

EV (CO)
CS/06/07/2021