

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2020

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.R.P(NPD)No.1884 of 2010

Subramanian

...Petitioner

Versus

1.Indrani
2.Rajiv Gandhi
3.Vinayagamoorthy
4.Prabhu
5.Ravi @ Ravichandran
6.Minor Sriram
7.Minor Ashwin

...Respondents

This Civil Revision Petition is filed under Section 115 of C.P.C against the order and decree made in I.A.No.115 of 2008 in unnumbered A.S.No.... of 2008 dated 03.02.2010 on the file of the Principal Subordinate Judge, Tindivanam.

For Petitioner

Mr.P.Dinesh Kumar
for Mr.D.Aravichander

For Respondents - 1 & 2 :

Mr.P.Rajaraman

Respondents - 3 to 5 :

set ex-parte

Respondents - 6 & 7 :

Rep. by their mother
& next friend R1

ORDER

The present Civil Revision Petition has been filed challenging the order dated 03.02.2010 passed by the learned Principal Subordinate Judge, Tindivanam in I.A.No.115 of 2008 in unnumbered A.S.No..... of 2008, in and by which, the learned Principal Subordinate Judge had dismissed the Interlocutory Application filed by the petitioner herein.

2. The brief facts of the case are as follows:

The respondents 1 & 2 had filed a suit O.S.No.109 of 2004 against the petitioner and the respondents 3 to 7, on the file of the Principal District Munsif Court, Tindivanam and the same was decreed in favour of the respondents 1 & 2 on 05.01.2006. Against the said decree, the petitioner preferred an Appeal in A.S.No..... of 2008 before the Principal Subordinate Court, Tindivanam, however, the same was returned due to the belated filing. Therefore, the petitioner had filed an Interlocutory Application in I.A.No.115 of 2008 for condoning the delay of 37 days in filing the above

First Appeal. The learned Principal Subordinate Judge, Tindivanam had dismissed the said Interlocutory Application by stating that though the suit O.S.No.109 of 2004 was decreed on 05.01.2006, however, the petitioner/first defendant had preferred the First Appeal only after a delay of 746 days. Aggrieved by the order of dismissal, the petitioner has filed the present Civil Revision Petition before this Court.

3. The learned counsel for the petitioner would submit that the suit O.S.No.109 of 2004 was decreed on 05.01.2006 and the petitioner applied Copy Application only on 20.02.2006. Thereafter, he had obtained the judgment copy on 01.07.2008 and filed the Appeal Suit on 21.07.2008.

3.1 The learned counsel would contend that even before the decretal of the suit O.S.No.109 of 2004, the petitioner was suffered from severe fever and bed ridden and that he applied the Copy Application on 20.02.2006 i.e., after a delay of 46 days from the date of judgment and decree. Thereafter, when the judgment copy was received by the petitioner's counsel on 01.07.2008, the petitioner went to a pilgrimage and therefore, he

belatedly filed the above Appeal Suit on 21.07.2008 i.e., after a delay of 21 days from the date of receipt of the judgment copy. Totally, there was a delay of 67 days, out of which, after reducing 30 days, the actual delay was only 37 days. While so, the learned Principal Subordinate Judge, Tindivanam had wrongly calculated that there was a delay of 746 days in filing the said Appeal Suit and dismissed I.A.No.115 of 2008 on the ground that the petitioner failed to provide any proper reason for the said delay.

3.2 The learned counsel would submit that the petitioner has a fair chance to succeed in the Appeal Suit. He would also submit that the delay has to be calculated in terms of the provisions of Section 12 of the Limitation Act. He would further submit that if the Copy Application was not filed within a statutory period of 30 days from the date of judgment, then the period of delay in getting the judgment copy will be excluded. In support of his contention, he relied on the judgment, **India House Vs Kishan N.Lalwani** reported in (2003) 9 SCC, wherein, the Honourable Supreme Court held as follows:

"7. It is well settled that by virtue of sub-section (2) of Section 29 of the Limitation Act the provisions of Section 12 are applicable for computing the period of limitation prescribed by any special or local law. (See *D.P.Mishra Vs. Kamal Narayan Sharma and Malojirao Naraingarao Shitole Vs. State of M.P.*). The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations. At the same time full effect should also be given to those provisions which permit extension or relaxation in computing the period of limitation such as those contained in Section 12 of the Limitation Act. The underlying purpose of these provisions is to enable a litigant seeking enforcement of his right to any remedy to do so effectively and harsh prescription of time bar not unduly interfering with the exercise of statutory rights and remedies. That is why Section 12 has always been liberally interpreted. To wit, the time requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be excluded from computing the period of limitation although such copy may not necessarily be required to be filed along with the appeal, application or memo of representation or review. No distinction is drawn between decrees or orders pronounced on the original side or the appellate or revisional side. No application is required to be made seeking the benefit of Section 12 of the Limitation Act; it is the statutory obligation of the court to extend the benefit where available.

Although the language of sub-section (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded from computing the period of limitation, the easier way of expressing the rule and applying it in practice is to find out the period of limitation prescribed and then add to it the time requisite for obtaining the copy - the date of application for copy, and the date of delivery, thereof both included - and treat the result of addition as the period of limitation. The underlying principle is that such copy may or may not be required to accompany the petition in the jurisdiction sought to be invoked yet to make up one's mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefor the litigant must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. All that sub-section (2) of Section 12 of the Limitation Act says is the time requisite for obtaining the copy being excluded from computing the period of limitation, or, in other words, as we have put it hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed. In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither is it so provided in sub-section (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view.

8. *If we were to accept the submission of the learned counsel for the appellant yet another consequence would follow. Section 5 of the Limitation Act or the power to condone delay by reference to proviso appended to Section 25(2) of the Act shall be exercisable for a period subsequent to the obtaining of the certified copy of the impugned order but not to the period before it. Such is not the prohibition contained in any of the said provisions. Depending on the facts and circumstances of a given case, the court may be called upon to exercise its discretionary power to condone the delay occasioned by the time lost either before applying for a certified copy or after the delivery thereof."*

He therefore prayed that the impugned order may be set aside.

4. *Per contra*, the learned counsel appearing for the respondents 1 & 2 would contend that the petitioner had not assigned proper reasons for the delay of 746 days and therefore, the learned Principal Subordinate Judge, Tindivanam rightly dismissed the condone delay application filed by the petitioner. He would further contend that Section 12 of the Limitation Act will not be applicable to this case since the petitioner herein filed the Copy Application after a delay of more than 30 days. Further, the petitioner has not yet adduced sufficient reasons for condoning the enormous delay of 746

days in filing the Appeal Suit. He therefore prayed that the present Civil Revision Petition may be dismissed. He further prayed that in the event of allowing this petition, heavy cost may be imposed on the petitioner. He has also relied on the judgment passed by this Court in the case of ***J.Venkatesh Vs. S.Venkataraman & Others*** reported in **2002 (1) L.W. 282.**

5. Heard the learned counsel on both sides and perused the materials available on record.

6. From a perusal of the materials on record, it is seen that the suit O.S.No.109 of 2004 was decreed on 05.01.2006, however, the petitioner/first defendant applied the Copy Application only on 20.02.2006 and obtained the judgment copy on 01.07.2008. Thereafter, the petitioner preferred the Appeal Suit belatedly on 21.07.2008. In order to condone the delay in filing the said unnumbered Appeal Suit, the petitioner filed I.A.No.115 of 2008 before the Principal Subordinate Court, Tindivanam. However, the learned Principal Subordinate Judge, Tindivanam had dismissed the said condone delay application vide order dated 03.02.2010.

7. The two important issues to be decided in the present case are as follows:

(i) Whether the unnumbered Appeal Suit was filed after a delay of 746 days or 37 days?

(ii) Had the petitioner explained proper reasons for condoning the delay period in filing the unnumbered Appeal Suit before the Principal Subordinate Court, Tindivanam?

8. As far as the first issue is concerned, the suit was decreed on 05.01.2006, however, the petitioner applied Copy Application on 20.02.2006 i.e., after a delay of 46 days from the date of judgment. Then, he filed the Appeal Suit on 21.07.2008 only after he obtained the judgment copy on 01.07.2008. Hence, there was a delay of 21 days in filing the Appeal Suit. Therefore, as rightly contended by the petitioner's counsel, the actual delay was only 37 days. Accordingly, the first issue is decided.

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8.1 So far as the second issue is concerned, the petitioner filed the Appeal Suit belatedly only because of the following two reasons. Firstly,

the petitioner applied Copy Application after a delay of 46 days since he was suffered from severe fever even before the suit was decreed. Secondly, the petitioner was unable to file the Appeal Suit immediately because at that time when his counsel had obtained the judgment copy of the suit, the petitioner went to a pilgrimage. Only after the petitioner returned from pilgrimage, he came to know that the judgment copy was given to his counsel on 01.07.2008 and thereafter, he filed the Appeal Suit on 21.07.2008 i.e., after a delay of 21 days from the date of receipt of the judgment copy. Though the petitioner had explained the aforesaid reasons for condoning the delay of 37 days in filing the Appeal Suit, however, the learned Principal Subordinate Judge, Tindivanam without considering the same simply dismissed the condone delay application on the ground that the petitioner has not produced any proof or evidence for the said reasons.

9. In view of the facts and circumstances of the case, this Court is satisfied with the reasons stated by the petitioner for condoning the delay of 37 days in filing the Appeal Suit and inclined to set aside the impugned order. However, considering the request made by the counsel for the

respondents 1 & 2, this Court feels that it would be appropriate to impose cost on the petitioner.

10. Accordingly, this Civil Revision Petition is allowed with costs of Rs.12,000/- payable by the petitioner to the counsel for respondents1&2, within a period of three weeks from the date of receipt of a copy of this order and the order dated 03.02.2010 passed by the learned Principal Subordinate Judge, Tindivanam in I.A.No.115 of 2008 in A.S.No..... of 2008 is set aside. Considering the fact that the matter is pending from the year 2010, this Court directs the learned Principal Subordinate Judge, Tindivanam to number A.S.No..... of 2008 within a period of two weeks from the date of receipt of a copy of this order and dispose of the same within a period of six months from the date of first hearing of the said Appeal Suit. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

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KRISHNAN RAMASAMY, J.,

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To

The Principal Subordinate Judge,
Tindivanam.



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