

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.01.2020

CORAM

THE HON'BLE Mr. **JUSTICE V.BHARATHIDASAN**

C.R.P. (PD) No.2042 of 2009

and M.P.No.1 of 2015

1. State of Tamil Nadu,
Rep. by its District Collector,
Erode.
 2. Deputy Director,
Medical & Rural Health Services and Family Welfare,
Family Welfare Bureau,
Erode.
 3. Medical Officer,
Government Hospital,
Anthiyur.
-
- ..Vs..
- Selvi Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the Fair order dated 12.02.2015 passed in I.A.No.48 of 2014 in unnumbered Appeal in C.F.R.No.10210 of 2013 on the file of Principal District Judge, Erode in O.S.No.81 of 2004, on the file of Sub Court, Bhavani, Erode.

For Petitioners : Mr.Y.T.Aravind Gosh
Government Advocate (C.S.)

For Respondent : Mr.C.Kulanthaivel

ORDER

This Civil Revision Petition has been filed against the order dated 12.02.2015 passed in I.A.No.48 of 2014 in unnumbered Appeal in C.F.R.No.10210 of 2013, dismissing the application filed to condone the delay of 1321 days in filing the appeal against the Judgment and Decree passed in O.S.No.81 of 2014 dated 31.10.2006 on the file of Subordinate Judge, Bhavani, Erode.

2. The respondent herein filed a suit in O.S.No.81 of 2004 on the file of the Subordinate Court, Bhavani for compensation of a sum of Rs.3,50,000/-(Rupees Three Lakhs Fifty Thousand only) on the ground of medical negligence. According to the plaintiff she is a coolie and undergone a tubectomy operation with the Government Hospital at Anthiyur, Bhavani Taluk on 04.05.2000. Thereafter, she got pregnant and gave birth to a child on 02.03.2002. On the above circumstances, they filed a suit for compensation stating that it was due to negligence on the part of the Doctor who conducted tubectomy. After contest, the suit was decreed by the trial Court, by Judgment and

decree dated 31.10.2006, by awarding a compensation for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) payable by the petitioners which has to be deposited by the petitioners in the name of the child. Thereafter, the petitioner filed an appeal with the delay of 1321 days along with an application in I.A.No.48 of 2014 under Section 5 of the Limitation Act and Section 151 of C.P.C. to condone the delay in filing the Appeal and the said application was dismissed by the trial Court by an order dated 12.02.2015. Challenging the same, the present Revision has been filed.

3. The learned counsel for the petitioners submitted that eventhough the copies of the Judgment and decree was ready on 31.10.2006, the petitioner came to know about the same only in the year 2009 and they obtained the copies on 05.11.2009. and thereafter immediately taken steps to file an Appeal, and the Appeal came to be filed in the year 2013 with the delay of 1321 days. He would further submit that the said delay is neither wilful nor wanton.

4. Per contra, the learned counsel for the respondent would

submit that eventhough decree was passed in the year 2006, the copies were delivered immediately. But, the petitioners did not come forward to file Appeal in time and only after filing of the Execution Petition, the petitioners came forward to file an appeal to avoid payment of compensation.

5. This Court have considered the submission made by the learned counsel on either side and perused the materials available on records carefully.

6. Even as per the affidavit filed in support of the petition, it can be seen that the copies of the Judgment and decree were delivered to the petitioners on 05.01.2009 itself and on that date itself the petitioners has knowledge about the decree, however, the appeal came to be filed only in the year 2013 with delay of 1321 days. There is no acceptable reason stated for filing the Appeal after four years, from the date of receipt of the copy of the Judgment, as the delay was not properly explained, the court below rightly dismissed the application. This Court finds no irregularity or illegality in the order passed by the trial Court, and find no merit in the revision and it

is only liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

arr

29.01.2020



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V.BHARATHIDASAN,J

arr

To

1. The Principal District Judge, Erode.
2. The Sub Court, Bhavani, Erode.



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