

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P. (NPD) No.94 of 2012 and
M.P.No.1 of 2012

Bombay Velankanni Catholic Association,
Keerthi Mandir Housing Society,
Plot No.II, L.J.Road,
Mahim, Mumbai 400 016.
Rep by its
President D.Silva Edwin Philip

... Petitioner

Vs

1.Bilvendra Raj,
S/o.Arokiasamy,
4/40, Aryanattu Street,
Velankanni Town Panchayat,
Kilvelur Taluk,
Nagapattinam District.

2.Rev.Father Leo Amburose,
C/o.The Bishop of Thanjavur,
Bishop's House, Bishop Hall,
Thanjavur Town,
Thanjavur.

3.Santhanrose,
W/o. Late Bilvendra Raj.

4.Amirrakhi,
D/o.Late Bilvendra Raj.

5.Divyanathan,
S/o.Late Bilvendra Raj.

RR3 to 5 are residing at 4/40, Ariya Nattu Street,
Velankanni, Nagapattinam District.

RR3 to 5 brought on record as LR's of the deceased
R1 viz., Bilvendra Raj, vide order of Court dated
20.07.2020 made in CMP.No.23158, 23163 and 23178 of 2019
in CRP(NPD) No.94 of 2012.

. . . Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., praying to set
aside the fair and final order made in I.A.No.959 of 2008 in UFPOP unnumber of
2008 in UFAS unnumber of 2008, dated 22.03.2011, on the file of the District
Judge, Nagapattinam and allow the same.

For Petitioner : Mr.A.E.Ravi Chandran

For Respondents : Mr.A.R.M.Arunachalam for R3 & R4

ORDER

This civil revision petition has been filed to set aside the fair and final order
made in I.A.No.959 of 2008 in UFPOP unnumber of 2008 in UFAS unnumber of
2008, dated 22.03.2011, on the file of the District Judge, Nagapattinam and allow
the same.

2. The case of the petitioner is that the petitioner filed a suit against the
respondents in the year 2008 as pauper for declaration, challenging the judgment

and decree passed in O.S.No.394 of 1995, on the file of the Additional Sub Judge, Nagapattinam and the suit was dismissed on 11.02.1999. Challenging the said suit, the petitioner filed an appeal before the District Judge, Nagapattinam, in unnumbered UF POP /08 in UF AS /08 and there was a delay in filing the appeal and therefore, the petitioner filed an application in I.A.No.959 of 2008 to condone the delay of 3342 days in preferring the appeal against the judgment and decree dated 11.02.1999 in O.S.No.394 of 1995 on the file of the Additional Subordinate Judge, Nagapattinam. The said application was dismissed by the learned District Judge, Nagapattinam. Challenging the said order, the petitioner is before this Court by way of this revision petition.

3. The learned counsel for the petitioner would submit that petitioner is an Association, having its registered office at Bombay, in order to visit the velankanni temple, the association members come to Velankanni and they wanted to stay, therefore, the petitioner purchased the suit property. Thereafter, subsequently, the second respondent instead of registering the suit property in the name of the Association, he registered in his name, since he was the Secretary at that time and he is also the member of the Velankanni Church. Thereafter, the petitioner Association filed a suit for permanent injunction and for declaration in O.S.No.394 of 1995. The said suit was dismissed.

4. The learned counsel appearing for the petitioner would also submit that the petitioner has got merit in his case and therefore, after the judgment, he approached one Advocate Fathimanathan, Chennai, to file an appeal and also paid Rs.25,000/- as fees and she has stated that it will take 10 years to take the appeal. The petitioner has trusted the words of the said Advocate and kept quiet. Subsequently, the petitioner came to know that the said advocate has not filed any appeal and she left from India. Therefore, the petitioner engaged another advocate. At that time, the petitioner Association came to know that the advocate Fathimanathan, has not filed the appeal at all. Therefore, the present counsel filed the appeal. By the time, there was a delay of 3342 days.

5. Further, the learned counsel appearing for the petitioner Association would submit that the learned District Judge has not properly appreciated the affidavit and also the evidence of the petitioner and even the copy application was obtained in the year 1999 itself and engaged the advocate Fathimanathan for filing appeal. But, the learned District Judge has stated that in the year 2003 only, the petitioner has filed the copy application. Therefore, the petitioner is not deligent and further, he has not given any reason for delay and delay cannot be condoned.

Therefore, the learned counsel would submit that the reason stated by the learned

District Judge is not correct and also he cited the judgment of the Hon'ble Supreme Court of India reported in **1998 (7) SCC 123, 2002 (3) SCC 195, 2005 (3) SCC 752, 2015 (3) SCC 569 and 2012 Scale 152**. He also submitted that the length of the delay is not a matter and only the sufficient reason has to be given and therefore, technicality cannot be given much importance and the right of the parties cannot be frustrated by the technicality.

6. The learned counsel appearing for the respondents R3 and R4 submitted that he vehemently opposing to allow this petition and the petitioner is not diligent to file the appeal within time and for eight years, he has not taken any steps to file appeal. Subsequently, he filed the appeal with delay. Even he filed a suit which was a pauper and the appeal also pauper. So without being paid any court fees they wanted to pursue the case. Therefore, the revision has to be dismissed.

7. Heard the learned counsels on both sides and perused the records. It is noted that the petitioner filed the suit against the respondents before the Additional Sub Judge, Nagapattinam. The said suit was dismissed on 11.02.1999. Subsequently, the petitioner filed an appeal before the District Judge, Nagapattinam and for filing the appeal there was a delay of 3342 days and also

filed an application for the association as pauper and also the application to condone the delay of 3342 days. The said application was dismissed by the learned District Judge, Nagapattinam.

8. A careful reading of the entire material, though the judgment was delivered by the Additional Sub Judge, Nagapattinam on 11.02.1999, the appeal should have been filed within 30 days from the date of receipt of the copy of the judgment and the learned counsel for the petitioner himself admitted that the copy application was applied on 24.03.1999 and the lower court had called for stamp paper on 2.08.1999 and the stamp paper was affixed immediately and copy was made ready on 26.11.1999 and the copy was delivered on 01.12.1999. Therefore, the copy of the judgment itself shows that he obtained copy on 01.12.1999. Therefore, the appeal should have been filed on 30.01.2000. But, the petitioner has not filed appeal, whereas he filed appeal only in the year 2008, i.e., after seven years. The only reason stated in the affidavit is that he engaged an advocate from the High Court of Madras one Fathimanathan. The said advocate has told that the appeal will be taken only after 10 years, but, on record, no appeal was filed.

9. Even though the petitioner is a registered Association, that too, from Bombay, even he has not cared to get any number of the appeal and date of the

appeal and all those things. After seven years, he has stated that he came to Velankanni and at that time, he came to know that the second respondent sold the property to the first respondent. Thereafter, he came to know that no appeal was filed. Therefore, he engaged new counsel and after verification in the record, the advocate Fathimanathan has not filed any appeal. It is the case of the petitioner that for visiting Velankanni every year and as the member of the Association, he has purchased the property and it is not the petitioner's case to say that for seven years he has not visited Velankanni. Every year, one or other members are visiting Velankanni. If they have any difficulty in staying in the property, immediately they could have informed. But, he has not stated anything about whether he has visited or not.

10. It is pertinent to note that aggrieved with the judgment of the Additional Sub Judge, the appeal can be filed only to District Court and no appeal can be filed straight away before the High Court. At the time of handing over the certified copy of the judgment by the Trial Court itself, they would have advised that appeal should be filed to the District Court and not to the High Court. Therefore, the petitioner's contention that he engaged Fathimanathan, the Advocate from High Court itself is not believable.

11. Therefore, considering the materials, this Court does not find any perversity in the order passed by the learned District Judge and there is no quarrel with the settled propositions of law laid down by Hon'ble Supreme Court of India, referred by the learned counsel for the petitioner and there is no quarrel with the proposition of law that the length of the delay is not the matter. It is only sufficient reason should be assigned. But one thing is clear that the reason and very explanation should be genuine and fair.

12. On reading the entire materials, a registered Association that too from Bombay, is not aware of filing of the appeal before the District Judge. When he filed the suit before the Sub Court, he came all along from Bombay to Nagapattinam and visited several time to Nagapattinam Court and filed suit as pauper and got judgment and he has stated that he has not known about the filing of appeal before the District Court and therefore, he approached the advocate Fathimanathan from High Court and also stated that he has preferred a complaint to Bar Council against the said advocate and also he does not know what had happened to the complaint.

13. Considering all these things, this court does not find any genuine reason

for condoning the delay and therefore, there is no perversity in the order passed by the learned District Judge, Nagapattinam. The citations referred by the learned counsel for the petitioner is not squarely applicable to the present case on hand. Therefore, the revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2020

Index: Yes/No
Internet: Yes/No
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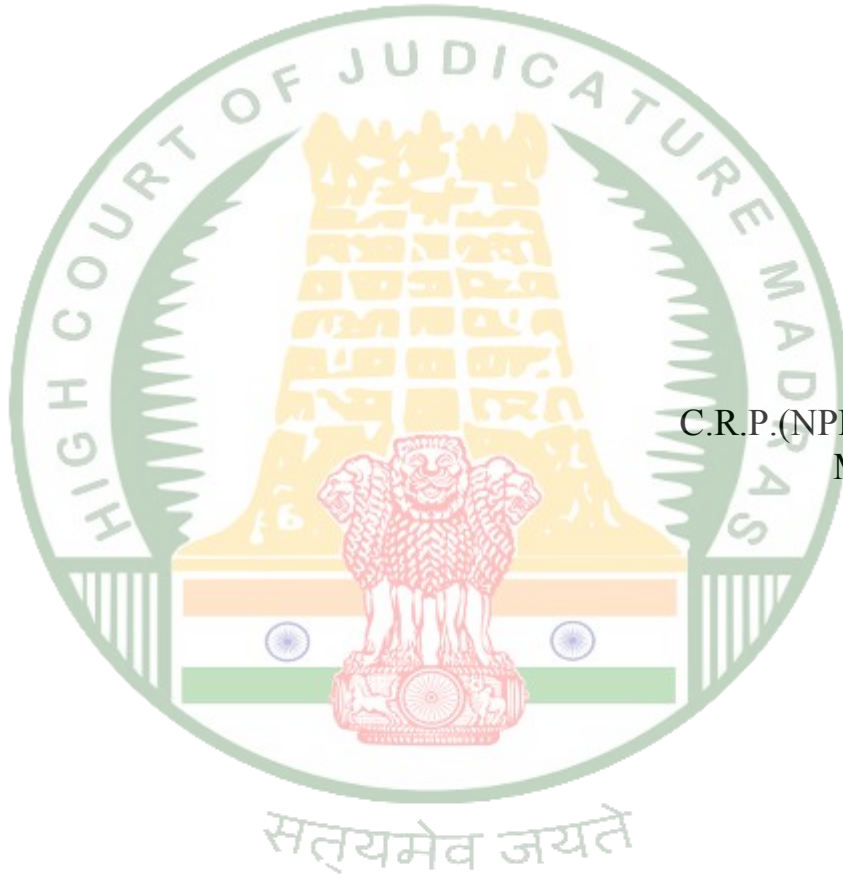
1. The District Judge, Nagapattinam.
2. The Additional Sub Judge, Nagapattinam.
2. The Section Officer, V.R. Section, High Court, Madras

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