

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19..02..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL REVISION PETITION NO.955 OF 2017
AND
C.M.P.NO.4725 OF 2017

The Commissioner,
Hosur Municipality,
Hosur.

..Petitioner/Petitioner/2nd Defendant

-Versus-

1.V.Shanthi
2.V.Muthukumar
3.V.Kalaivani

..Respondents/Respondents/Plaintiffs

4.The District Collector,
Krishnagiri.

5.The State of Tamil Nadu,
Rep. by its Department of Local Administration,
Fort St. George, Chennai 600 009.

... Respondents/Petitioners/Defendants 1 & 3

Petition filed under Article 227 of The Constitution of India praying to set aside the order dated 18.10.2016 made in * I.A.No.56 of 2015 in A.S.No. Nil of * 2015 by the learned District Judge, Krishnagiri, Krishnagiri District.

For Petitioner : Mr.N.Subbarayalu

For Respondent : Mr.M.Raja Raman for RR1 and 2
Mr.K.V.Babu (Amicus Curiae)

ORDER

This revision petition has been filed against the order dismissing the application filed by the petitioner seeking to condone the delay of 184 days in filing the appeal suit against the judgement and decree dated 09.01.2015 made in O.S.No.29 of 2003 by the learned Subordinate Judge, Hosur.

2. The petitioner is the 2nd defendant in the suit. The respondents 1 to 3 filed the above said suit for compensation for the death the husband of the 1st plaintiff and the father of the other plaintiffs due to the negligence of the petitioner

municipality. The suit was decreed and thereby the petitioner and the respondents 4 and 5 were directed to pay a sum of Rs.6,65,000/- as compensation to the plaintiffs jointly and severally. Challenging the same, the defendants 1 to 3 filed an appeal before the learned Subordinate Judge with a delay along with an application for condonation of delay in filing the application. That application was dismissed by the appellate court. Challenging the same, the 2nd defendant alone is before this court with this instant revision petition.

3. I have heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents 1 to 3 and the learned counsel appearing for the 4th respondent and also perused the records carefully.

4. The learned counsel appearing for the petitioner would submit that though the petitioner had taken every diligent steps immediately, after getting certified copies of the judgement and decree, to prefer an appeal, due to administrative reasons, he could not get approval immediately and therefore, there had occurred delay of 184 days in preferring the appeal.

5. Per contra, the learned counsel appearing for the learned counsel for the respondents 1 to 3 would contend that, first of all, the revision petition itself is not maintainable. According to him, there is a decree against the respondents 1 to 3 to pay the compensation jointly and severally and aggrieved by the same, the respondents 1 to 3 have filed appeal suit jointly with a delay along with an application for co condonation of delay which was dismissed by the appellate court. Aggrieved by the order refusing to condone the delay, the 2nd defendant alone has come up with this revision petition and therefore, the revision is not maintainable in law.

6. The learned counsel for the respondents 1 to 3 would further contend that the delay is enormous and the same has not been properly explained by the petitioner. Mere administrative reasons is not a ground to condone the delay. The learned counsel in support his contention placed reliance heavily upon the judgement reported in Indian Oil Corporation Limited v. Mrs.Sakuntala Ganapathy Rao , 1998 - 3 L.W. 780 and Office of the Chief Post Master General v. Living Media India Limited, AIR 2012 SC 1506.

7. So far as the first contention regarding maintainability of revision is concerned, even though the appeal suit has been filed by the defendants jointly with a delay, the delay condonation application came to be dismissed and as against the order refusing to condone the delay, the 2nd defendant alone is before this court. Even assuming that the judgement and decree

made in the suit in favour of the respondents 1 to 3 has been confirmed in view of the dismissal of the application filed under Section 5 of the Limitation Act to condone the delay, still, the 2nd defendant can maintain the appeal suit under Order 41, Rule 4 of CPC and get the entire decree set aside and therefore, it cannot be said that the revision is not maintainable.

8. As far as the delay is concerned, though it is stated that judgement was delivered on 09.01.2015, copies were made ready on 17.02.2015 and the same were delivered on 20.02.2015, the petitioner had to get approval from his higher authorities to appeal against the decree and therefore, due to administrative reasons, there had occurred a delay of 184 days in preferring the appeal suit.

9. Now, it is the settled law that the expression "sufficient cause" as mentioned in Section 5 should be given a liberal construction to ensure that substantial justice is done especially, when there is no gross negligence or deliberate inaction or lacking of bonafide on the part of the petitioner, a liberal concession has to be adopted to advance substantial justice considering the genuine difficulty and circumstances beyond the control of the petitioner.

10. In the instant case, the reason set out for the delay was due to administrative process in getting approval from the higher authorities. That apart, the delay was hardly 184 days. In the considered opinion of this court the reason is bona fide one. The court below did not consider the same and without advertng to the circumstances of the case, dismissed the application thereby refused to condone the delay. Thus, the order of the appellate court deserves interference at the hands of this court.

11. So far as the judgement relied upon by the learned counsel for the respondent reported in 1998 - 3 LW - 780 (Indian Oil Corporation Limited v. Sakuntala Ganapathy Rao), even though the Division Bench has held that the court granting indulgence must be satisfied that there was diligence on the part of the appellant that he was not guilty of any negligence. However, in the above judgement, the Division Bench of this Court had come to the conclusion that the delay was deliberate and refused to condone the delay. In the considered opinion of this court, the judgement, referred to above, will not be application to be facts of the instant case.

12. In so far as the other judgment relied upon by the respondent reported in AIR 2012 SC 1506, Office of the Chief Post Master General v. Living Media India Limited, after

considering number of judgements, the Hon'ble Supreme Court on facts and circumstances of the case has held that there was a delay of 427 days in preferring the appeal and the delay was unexplained and the reason for the delay was not cogent. Therefore, the Hon'ble Supreme Court has refused to condone the delay. As such the judgement referred to above is also not applicable to the facts of the instant case as there was no negligence on the part of the petitioner herein.

13. For the foregoing discussion, this court is of the view that the order of the appellate court requires interference and the delay in preferring the appeal is condonable.

In the result, this civil revision petition is allowed and the order passed by the learned appellate Judge refusing to condone the delay in preferring the appeal is set aside and the application is allowed and the delay is condoned. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar(CS-IV)

19.02.2020

*** Corrected as per order of this court
for being mentioned dated 14.10.2020
in CRP.No.955 of 2017**

Sd/-

Assistant Registrar(CS IV)

15.10.2020

//True copy//

Sub Assistant Registrar

kmk

To

1.The District Judge,
Krishnagiri, Krishnagiri District.

2.The District Collector, Krishnagiri.

3.The State of Tamil Nadu,
Rep.by its Department of
Local Administration,
Fort St. George, Chennai 600 009.

+1cc to Mr.N.Subbarayalu, Advocate SR.No.14599

+1cc to Mr.M.Raja Raman, Advocate SR.No.14397

**To be Substituted
to the order
Already despatched
on 07.09.2020**

C.R.P.No.955 of 2017

NR(CO)

GMV(28/07/2020)

CS/15/10/2020