



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) .Nos.2196 & 2197 of 2009

P.Sekar

... Petitioner in both the revisions
/ Petitioner/ Plaintiff

Vs.

1.R.Baskar

2.B.Sumithra

3.C.Annakkodi

... Respondents in both revisions /
Respondent / Defendant

Common Prayer:- These Civil Revision Petitions have been filed under Section 115 of Code of Civil Procedure, to set aside the orders passed by the Principal Subordinate Judge, Tiruchirappalli in I.A.Nos.304 and 305 of 2008 in O.S.SR.No. 2295 of 2005, dated 28.07.2005 by allowing this revision and allow the Petition as prayed for.

In both revisions:

For Petitioner : Mr.S.K.Mani

For Respondents : No appearance

COMMON ORDER

The present civil revision petitions have been filed challenging the orders of the learned Principal Subordinate Judge, Trichirappalli passed in I.A.Nos. 304 and 305 of 2008 in O.S.SR.2295 of 2005.

2.The petitioner has instituted a suit against the respondents for recovery of a sum of Rs.1,38,361/- (Rupees one lakh thirty eight thousand three hundred and sixty one only) towards payment of balance sale consideration. The Court fee payable is Rs.10,378/- (Rupees ten thousand three hundred and seventy eight only). Though the suit was filed on 25.07.2005, it appears that the proper Court Fee was not paid and hence, the Registry returned the plaint for payment of Court Fee.



3.The petitioner filed I.A.Nos.304 and 305 of 2008 respectively to condone the delay of 279 days in representing the plaint and to condone the delay of 966 days in paying the deficit Court fee.

4.In paragraph No.3 of the affidavit filed in support of the above applications, it is stated that the petitioner paid Rs.3,000/- (Rupees three thousand only) initially towards Court fee and thereafter, he paid Rs.5,000/- (Rupees five thousand only). But, the counsel has presented the plaint with payment of Rs.100/- only. The petitioner further stated that he is not responsible for delay in representing the plaint and for payment of deficit Court fee.

5.The applications were opposed by the respondents by filing a counter affidavit.

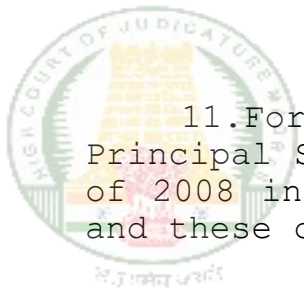
6.After hearing the cases, the trial Court dismissed the applications on the ground that the delay was not properly explained. Aggrieved over the same, the present civil revision petitions have been filed.

7.Mr.S.K.Mani, learned counsel for the petitioner would argue that the delay in filing those applications have been properly explained by the petitioner. However, the trial Court by adopting the hyper technical view had rejected those applications. The petitioner after disposal of his properties, has shifted to the residence of Mysore. Hence, he was not properly intimated. The mistake was committed by the counsel and hence, the petitioner should not be penalized.

8.Though the respondents have been served with Court notices and their names were also printed in the cause list, there is no representation on behalf of the respondents either in person or through their counsel.

9.When the matter was taken up for hearing yesterday ie. on 28.07.2020, there was no representation and it was posted today under the caption " for orders".

10.In the instant case, it is not in dispute that the suit has been filed by the petitioner for recovery of money alleging that the respondents failed to pay the balance sale consideration. In paragraph No.3 of the affidavit, it has categorically stated that the petitioner has paid money to the counsel for payment of Court fee. But, he failed to pay the Court fee in time. It is also stated that the return of the plaint was not properly intimated to the petitioner. It is fairly well settled that the Courts shall adopt liberal approach in considering the petition filed for condonation of delay, especially, when there is nothing on record to show it was done deliberately. In this case, perusal of the records reveal that the trial Court without properly appreciating the facts of the case assigned in the affidavit, dismissed those petitions.



11.For the foregoing reasons, the orders passed by the learned Principal Subordinate Judge, Tiruchirappalli in I.A.Nos. 304 and 305 of 2008 in O.S.SR.No.22195 of 2005, dated 28.07.2005 are set aside and these civil revision petitions are allowed. No costs.

WEB COPY

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal Subordinate Judge
Tiruchirappalli

C.R.P. (MD) .Nos.2196 & 2197 of 2009

29.07.2020

SPU(07.08.2020)3P 2C