



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.963 of 2019
and
C.M.P. (MD)No.5425 of 2019

Chandra

: Petitioner

.. Vs ..

1.George
Velladurai (Died)
2.Shanmugasundaram
3.Esakkimuthu @ Indiran
Gopal (Died)
4.Sornam

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 06.03.2019 in I.A.No.229 of 2014 in O.S.No.37 of 2010 on the file of the Principal District Munsif Court, Nanguneri.

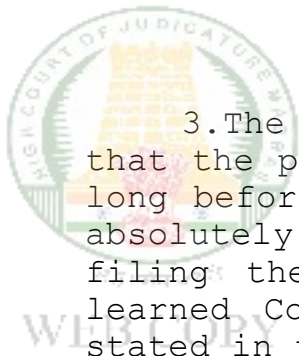
For Petitioner

:Mr.G.Prabhu Rajadurai

ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal District Munsif, Nanguri, in I.A.No.229 of 2014 in O.S.No.37 of 2010, dated 05.03.2019.

2.The first respondent herein, as plaintiff, filed a suit in O.S.No.37 of 2010 for declaration and for consequential permanent injunction. It appears that during the pendency of the suit, the first defendant in the suit died and his legal representatives were sought to be impleaded as parties in I.A.No.438 of 2013. However, the said application was not accompanied by petitions to set aside the abatement and to condone the delay in filing the petition to set aside the abatement, even though the petition was filed with considerable delay. Thereafter, the plaintiff filed an application in I.A.No.229 of 2014 to condone the delay in filing a petition to set aside the abatement. Though the delay was considerable, namely, 34 months, the lower Court allowed the petition on payment of cost of Rs.2,500/-. Aggrieved by the same, the above Civil Revision Petition is filed by one of the proposed parties.

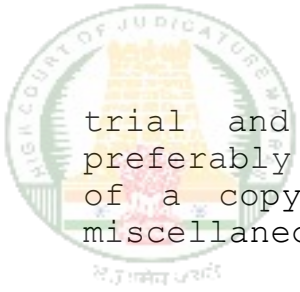


3.The learned Counsel for the revision petitioner submitted that the plaintiff had knowledge about the death of first defendant long before the first application was filed. It is contended that absolutely there is no explanation for the delay of 34 months in filing the petition to set aside the abatement. Further, the learned Counsel for the petitioner pointed out that the reasons stated in the affidavit filed in support of the petition is contrary to the admitted facts and the stand taken by the very same plaintiff in the earlier application. Since the plaintiff has come forward with a false plea, suppressing material facts, the learned Counsel for the petitioner submitted that the lower Court ought not to have allowed the petition by simply putting a condition of payment of cost of Rs.2,500/-.

4.The lower Court has found that there is negligence on the part of Advocate in filing a petition to set aside the abatement without delay. The lower Court has considered the filing of I.A.No.438 of 2013 and the attending circumstances, that led to filing of another application under Order 22 Rule 4 CPC along with the petition to condone the huge delay. The petition to bring on record the legal representatives of the deceased, as parties to the suit or appeal should always be considered with lenience. When several appeals and Civil Revision Petitions are pending before this Court for more than 10 or 15 or 20 years, the delay in filing a petition to bring on record the legal representatives of the deceased parties may be caused due to various reasons, like, change of address, communication gap, negligence of Advocate and lack of knowledge of litigants. The Court is expected not to be pedantic or apply any stringent or rigid formula to consider such application. The reasons for the delay, even according to the learned Counsel for the petitioner, is obvious. Merely because, the affidavit does not contain the correct reasons, it is not a good ground to dismiss, when the Court has got material to satisfy itself, as to the cause for delay.

5.The lower Court has allowed the petition filed under Section 5 of the Limitation Act 1963, and condoned the delay of about 34 months on payment of cost, as the delay was only on account of Advocate's negligence in filing a petition earlier to implead the legal representatives without even a petition to set aside the abatement or condone delay petition in filing a petition to set aside the abatement. In such circumstances, the order of lower Court is perfectly in order and there is no material irregularity or illegality in condoning the delay on payment of cost of Rs.2,500/-.

6.As a result, this Civil Revision Petition is dismissed and the order passed by the learned Principal District Munsif, Nanguri, in I.A.No.229 of 2014 in O.S.No.37 of 2010, dated 05.03.2019, is hereby confirmed. Since the suit is pending from 2010, the learned Principal District Munsif, Nanguneri, is directed to expedite the



trial and dispose of the suit, as expeditiously as possible, preferably within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Deputy Registrar (LA&M)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

To

1.The Principal District Munsif, Nanguneri.

2.The Section Officer,VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-14488[F] dated 20/08/2020)

C.R.P. (PD) (MD) No. 963 of 2019
19.08.2020

AP(27/08/2020) 3P 5C