



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2020

CORAM

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

C.R.P. (NPD) (MD)No.1420 of 2015

G.Chellammal

: Petitioner

.. Vs ..

1.G.Jeganathan

2.G.Pushpanathan

3.G.Shanmuganathan

4.G.Pandiarajan

: Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to aside the order, dated 10.08.2011 made in I.A.No.169 of 2008 in A.S.No. of 2008 in O.S.No.131 of 2002 on the file of the Principal Subordinate Court, Dindigul.

For Petitioner	:	Mr.R.Ramadurai
For R2	:	Mr.M.Saravanan
For R1, R3 and R4	:	No Appearance

ORDER

This Civil Revision Petition is directed against the order in I.A.No.169 of 2008 in unnumbered appeal suit, dismissing the petition to condone the delay of 893 days in filing the appeal suit as against the judgment and decree of the trial Court in O.S.No.131 of 2002, on the file of the District Munsif Court, Veda sandur.

2.The revision petitioner is the plaintiff in the suit in O.S.No.131 of 2002. The suit is for bare injunction and the said suit was dismissed. Aggrieved by the same, the plaintiff preferred an appeal with the delay of 893 days. In the affidavit filed in support of the petition for condonation of delay, the petitioner has stated that her Counsel, to whom the case was entrusted, has promised her that the appeal would be filed immediately after obtaining the certified copy of judgment and decree of the lower Court. It is further stated that believing her Counsel, she did not contact her Counsel further. Thereafter, she was under the impression that the appeal is filed immediately after the copy of the judgment and decree is obtained. The petitioner further stated in the affidavit that her Counsel though sent a letter reminding her to contact him for filing of appeal, submitted that the said letter did not reach her. It was, therefore, contended by the petitioner that she did not file the appeal within time. It was also stated that she contacted her Counsel by visiting personally only during October'2008 and that only thereafter, she came to know. It was contended that delay is neither nor wanton.



3.The said petition was contested by the defendants in the suit. The lower Court dismissed the petition filed under Section 5 of the Limitation Act mainly on the ground that the petitioner has not proved the reasons stated by her in the affidavit filed in support of the petition to condone the delay. Aggrieved by the same, the present revision petition is filed.

4.Except stating that the petitioner has not proved her case and that the reasons for the delay, as projected by the petitioner, are not supported by documents, the learned Judge has not considered the vital issue, whether the petitioner has satisfied the Court by proper explanations justifying the delay. This Court is able to see that the petitioner's age is more than 70 years and that she is entitled to some indulgence from the Court on account of her age. The petitioner's substantial right in the appeal can be decided on merits only when she is given sufficient opportunity. Adequacy or sufficiency of the reasons given by the petitioner for non filing of the appeal within time was not considered by the lower Court by referring to the reasons stated in the affidavit filed by the petitioner and the objections raised by the respondents in the counter affidavit.

5.The revision petitioner is the mother and the respondents are her own sons. The revision petition is opposed only by the second respondent and the other respondents have not engaged any Counsel to represent them. It is also admitted by the learned Counsel for the second respondent that the mother/revision petitioner is living with the other respondents herein. This revision petition was earlier adjourned for settlement. However, it is reported today that the second respondent is not agreeable for the terms or proposals submitted by the revision petitioner's side. Considering the close relationship between the parties and having regard to the overall circumstances of the case, this Court is inclined to allow this revision petition.

6.Accordingly, the revision petition is allowed and the order of the lower Court in I.A.No.169 of 2008 in A.S.No. of 2008, dated 10.08.2011 passed by the learned Principal Subordinate Judge, Dindigul, is set aside. The petition in I.A.No.169 of 2008 in A.S.No. of 2008 stands allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Principal Subordinate Judge, Dindigul.

2.The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

C.R.P. (NPD) (MD)No.1420 of 2015

04.09.2020

AP(14/09/2020) 3P 4C