



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.02.2020
CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

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C.R.P(MD) No.2025 of 2019
and
C.M.P. (MD)No.10419 of 2019

U.Velladurai ... Petitioner/Appellant/Defendant

Vs.

Sundariah Thevar ... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the fair and decretal order dated 21.08.2019 passed in I.A.No.282 2018 in unregistered A.S. on the file of the Principal District Court, Tirunelveli confirming the Judgment and Decree of the Trial Court dated 29.08.2008 in OS.No.43/2008 on the file of Subordinate Judge, Sankarankoil.

For Petitioner : Mr.R.Nandakumar
For Respondent : MR.A.R.Kannappan

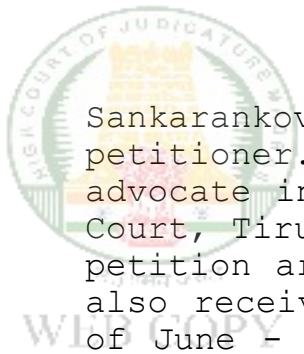
ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 21.08.2019 passed in I.A.No.282 2018 in unregistered A.S. on the file of the Principal District Court, Tirunelveli.

2. The revision petitioner filed an appeal before the Principal District Court, Tirunelveli with a delay excuse petition, to condone the delay of 3620 days in filing the appeal. That I.A.petition was dismissed by the First Appellate Court. Against which, the revision petitioner preferred this Civil Revision Petition.

3. Brief substance of the petition in I.A.No.282/2018 is as follows:

The petitioner is the defendant in O.S.No.43/2008. On 29.08.2008, the money suit was decreed though the petitioner has not executed any promissory note. Without considering the evidence and documents, the Sub Court, Sankarankovil passed a decree against the petitioner and hence, the petitioner contacted his advocate to file an appeal against the said decree and thereafter, the petitioner's advocate informed the petitioner that appeal was filed before the District Court Tirunelveli. In the meantime, the respondent / plaintiff filed an Execution Petition before the Sub Court,



Sankarankovil and in that petition, notice was sent to the petitioner. Again, the plaintiff approached his advocate and his advocate informed him that an appeal is pending before the District Court, Tirunelveli and enquiry for the appeal suit and the execution petition are to be conducted separately. The petitioner's advocate also received the case file from the petitioner. During the month of June - 2018, petitioner's advocate informed the petitioner that property will be sold in auction and so conducting the execution proceeding is not useful and instructed the petitioner to pay the loan amount with interest. On enquiry by the petitioner, his advocate has further stated that he engaged an advocate for filing an appeal and that advocate has not filed any appeal and advised this petitioner to file an appeal. After obtaining certified copies of judgment and decree from the trial Court, the petitioner filed this appeal with a delay of 3620 days and hence the delay is to be condoned.

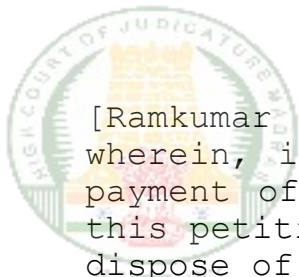
4. Brief substance of the counter in I.A.No.282 of 2018 is as follows:

The suit in O.S.No.43 of 2008 was decreed after detailed enquiry and thereafter, the respondent / plaintiff filed an Execution Petition in E.P.No.28 of 2009, to execute the decree, in that E.P. on 21.11.2009, the petitioner appeared through his counsel and on 22.03.2010, he filed counter and subsequently, through his wife and children, he filed an obstruction petition in E.A.No.112 of 2011 and that petition was partly allowed on 06.09.2014. Against which, C.M.A.No.3 of 2015 was filed and the same was dismissed on 15.07.2016. Thereafter, the respondent filed E.A.No.220 of 2016 for amending the original E.P. and the petitioner filed a counter on 17.08.2016. On the instigation of the petitioner, his sister Ganapthythai filed an obstruction petition in E.A.No.250 of 2016 in that petition also, the petitioner made his appearance through his Advocate. Even in this affidavit, the petitioner has not stated the name of the Advocate, who conducted the case, before the District Court. The reason stated by the petitioner is false and hence, the petition is to be dismissed.

5. After considering both sides, the trial Court dismissed the petition. Against which, the petitioner preferred this Civil Revision Petition.

6. On the side of the revision petitioner, it is stated that the petitioner was betrayed by his counsel, who informed him that the appeal has been filed and that E.P. has no consequences. It is not the length of the delay in filing the appeal that has to be considered and it is only the circumstance that occasioned the delay has to be considered. If the delay is not condoned, the valuable right of the defendant in appeal will be deprived.

7. On the side of the revision petitioner, a judgment of the Hon'ble Judges of the Supreme Court reported in AIR (2010) Supreme Court 1159



[Ramkumar Gupta and others Vs. Har Prasad and another] is cited, wherein, it is stated that the delay was condoned by the Court on payment of costs. The counsel for the petitioner has stated that this petition may be allowed on terms and the petitioner is ready to dispose of the appeal within the period to be fixed by this Court.

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8. On the side of the respondent, it is stated that the only reason stated by the petitioner for the delay is that the counsel engaged for filing an appeal, failed to file an appeal and the trial Court Advocate failed to inform the same, in the meanwhile, the same Advocate, who conducted the case and was contesting the execution proceedings and he filed an Interlocutory Application. The petitioner has not mentioned even the name of the counsel, who was entrusted with the case in the District Court, Tirunelveli. The respondent was struggling to enjoy the fruits of the decree and each day delay has to be explained. Even though the revision petitioner knew about the failure to file the appeal much earlier, he has not stated anything in this petition. How long the petitioner spent in getting the certified copies of the documents was not mentioned in the petition and therefore, there is no explanation for the delay and hence, prayed the petition to be dismissed.

9. On the side of the respondent, it is further stated that a person, who has knowledge about the proceedings, has not followed the same for a long period, cannot be excused for the delay. A judgment of this Court reported in **2007 (4) CTC 506 [Sivakumar and another Vs. R.Sengodan]** is cited, wherein, it is stated that the defendants having appeared through a counsel did not file a written statement and it would be indicative of the fact that they have got knowledge about the proceedings.

10. It is further stated that if a delay was condoned without recording satisfaction or reasonable or satisfactory explanation for inordinate delay and no such explanation offered by State and condonation of delay not proper and judicious and the order cannot be sustained. A judgment of the Hon'ble Supreme Court published in **1998 Supreme Court 2276 [P.K.Ramachandran Vs. State of Kerala and another]** is cited.

11. On the side of the respondent, it is further stated that though an appeal was filed more than four years later the Law Department of the respondent is not aware of the first and second suit but none of its officers personally contacted either of the advocates for filing written statement and preparation of the case and none bothered to appear before the trial Court on the date of hearing and a grave error was committed by the High Court in condoning delay ignoring judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act. A judgment of the Hon'ble Supreme Court published in **(2010) 5 Supreme Court Cases 459 [Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another]** is cited.



12. On the side of the respondent, it is stated that the respondent is willing and ready to dispose of the appeal.

13. It is seen that the respondent filed the suit in O.S.No.43 of 2008. Later, the respondent filed an Execution Petition in E.P.No.28 of 2009 and it is stated that the petitioner's wife and his children filed an execution application in E.A.No.112 of 2011 obstructing the execution of the E.P and that E.A. was partly allowed. It is seen that the sister of the petitioner filed another obstruction petition in E.A.No.250 of 2016 and that petition was dismissed. In all the petitions, the petitioner made his representation through the same Advocate. The petitioner cannot claim that he is not aware of the proceedings. When the petitioner is following the E.P proceedings with the help the same Advocate, the petitioner cannot claim that he is not aware of the non-filing of the Appeal, which should have been filed by an Advocate at Tirunelveli, who was engaged by his trial Court Advocate. Not even the name of the Advocate was mentioned in the affidavit. The delay is 3620 days, which is not sufficiently explained by the petitioner. The petitioner has not proved that he is diligent in following the case.

14. In the above circumstances, there is no merits in this Civil Revision Petition. Hence, this Civil Revision Petition is dismissed and the order of the trial Court is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

Ls

To

1.The Principal District Court,
Tirunelveli.

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

+1 CC to Mr.A.R.KANNAPPAN, Advocate (SR-6555[F] dated 17/02/2020)

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14.02.2020

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