



C.R.P.(NPD)No.3255 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3255 of 2014
and M.P.No.1 of 2014

P.Kuppusamy

.. Petitioner

Vs.

Udayakumar

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 29.04.2014 made in I.A.No.84 of 2013 in unnumbered A.S. on the file of the Principal District Court, Salem.

For Petitioner : Mr.B.Gopalakrishnan Gopi
for Mr.B.Kumarasamy
For Respondent : Not ready in notice

ORDER

(The matter is heard through “Video-conferencing/ Hybrid mode”)

Civil Revision Petition is filed against the fair and decretal order dated 29.04.2014 made in I.A.No.84 of 2013 in unnumbered A.S. on the



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file of the Principal District Court, Salem.

2.The petitioner is plaintiff and respondent is the defendant in O.S.No.42 of 2008 on the file of the Sub Court, Salem. The petitioner filed the said suit for specific performance of agreement of sale and for other reliefs, against the respondent. After contest, the said suit was decreed by the judgment and decree dated 29.02.2012. The respondent filed appeal challenging the said judgment and decree passed in the suit. Along with the appeal, the respondent filed I.A.No.84 of 2013 to condone the delay of 73 days in filing the appeal. The affidavit filed in support of the said application was sworn by the counsel for the respondent.

3.According to the respondent, the case bundle got mingled with other bundles in his office, hence the appeal was not filed in time and the delay of 73 days in filing the appeal has been occurred.

4.The petitioner filed counter affidavit, opposed the said



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application and stated that the respondent has not filed any affidavit and affidavit filed by the counsel for the respondent is non-est in law. The petitioner has further stated that for applying copy of the judgment itself, there was a delay. Even after copies of judgment were ready, the same was received by the respondent after delay and prayed for dismissal of the said I.A.

5.The learned Judge considering the materials placed before him, the nature of relief sought for in the suit, the reasons given by the counsel for the respondent and the delay is only 73 days, allowed I.A. on payment of cost of Rs.200/-.

6.Against the said order dated 29.04.2014 made in I.A.No.84 of 2013 in unnumbered A.S., the petitioner has come out with the present Civil Revision Petition.

7.Heard the learned counsel appearing for the petitioner and



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perused the entire materials on record.

8.From the materials on record, it is seen that the petitioner opposed the application to condone the delay of 73 days in filing the appeal on the ground that the respondent has not filed any affidavit in support of the above application and has not given any reason for not filing affidavit by the respondent. Further, affidavit filed by the counsel for the respondent in support of the above application is non-est in law and number of delay mentioned in the application is not correct. From the affidavit filed in support of the above I.A., it is seen that the counsel for the respondent has filed affidavit. According to the counsel for the respondent, the delay has occurred as the First Appeal papers got mingled with other bundles in his office. The practice of the Advocate or clerk filing affidavit in support of the application is deprecated by the Courts in number of cases. Generally, a party must file affidavit in support of the application. In the present case, the delay has been occurred only due to mistake of the Advocate as the appeal papers got



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mingled with other bundles in the Advocate office. The best person to speak about such a mistake is only the Advocate, who is responsible for the delay. In view of the same, affidavit filed by the Advocate is proper in the facts and circumstances of the case. Further, the delay in filing the appeal is only 73 days. The learned Judge considering the nature of the relief sought for in the suit and the reasons given by the respondent, condoned the delay. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

9.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet: Yes/No

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V.M.VELUMANI,J.



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To

The Principal District Judge
Salem.

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