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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.03.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.2774 of 2010 (NPD)

MP(MD) No.1 of 2010

P.Arumugam

.. Petitioner

Vs.

S.P.Kuzhanthivel

.. Respondent

Prayer: Civil Revision Petition is filed under Section 115 CPC against the fair and decreetal order made in I.A.No.67 of 2010, in unnumbered A.S.No. Of 2010, by the Sub Court, Palani, dated 01.12.2010.

For Petitioner : Mr.Mohammed Haneef
For Respondent : Mr.S.Anand Chandrasekar for
M/s.Savabhauvan Associates

O R D E R

The petitioner in I.A.No.67 of 2010, which is an application for condonation of delay of 1093 days in filing the appeal against the judgment and decree in O.S.No.285 of 2002, has come up with this Civil Revision Petition, on the said application being dismissed by the Appellate Court.

2.According to the petitioner, the suit filed by him for declaration and permanent injunction was dismissed by the trial Court and the counter claim filed by the respondent was allowed on 28.06.2007. He had filed the application for issuance of copies and the copy was made ready on 01.08.2007. The decree in counter claim was made available to him on 05.10.2007. Only after the receipt of the said decree in the counter claim, it was discovered that in the said decree as well as the appeal, the boundaries of the first item of the property were omitted to be mentioned. When he attempted to file application, seeking amendment of the decree in the counter claim, the respondent himself filed I.A.No.229 of 2008 seeking correction of the decree. The said application came to be allowed on 31.07.2008. Thereafter, the petitioner had filed copy application for obtaining decree in the counter claim in CA.No. 545 of 2008 on 27.08.2008. That application was finally complied with after several returns, since the papers transferred from District Munsif Court, Palani in the meantime. Finally, copy was made available to the petitioner only during April 2010. Thereafter, the petitioner had filed an appeal along with the application for condonation of delay of 1093 days.



3.This application was opposed by the respondent contending that the delay has not been satisfactorily explained.

4.The learned Subordinate Judge, Palani, who heard the application dismissed the application concluding that the appellant has not satisfactorily explained the delay. It is the said order of the dismissal that is challenged in this revision.

5. I have heard Mr.Mohammed Haneef, the learned counsel for Mr.Venkatesh, appearing for the petitioner and Mr. Anand Chandrasekar, the learned counsel appearing for the respondent.

6.Mr.Mohammed Haneef, the learned counsel appearing for the petitioner would submit that the lower Appellate Court erred in adopting strict approach in the matter of condonation of delay. He would also contend that the petitioner has explained the delay with sufficient reasons and most of the delay was due to the pendency of the application for amendment of the decree and the transfer of the suit papers from District Munsif Court, Ottachatram to the District Munsif Court, Palani. According to the learned counsel for the petitioner, the learned Subordinate Judge, over looked the fact that there was transfer of the suit papers, which resulted delay in the copy of decree being made available.

7.Contending contra, Mr.S.Anand Chandrasekar, the learned counsel appearing for the respondent would submit that even if the delay is condoned, the petitioner cannot succeed in the counter claim as he has not appealed against the decree in the suit. He would further argue that the petitioner, in any event, has not explained the delay properly and therefore, he is not entitled to indulgence of condonation of delay of more than 1000 days.

8.I have heard the rival submissions. The Honourable Supreme Court and this Court have been repeatedly pointing out that the Courts should adopt liberal approach in matters of delay, particularly the delay in filing the appeal. Unless the delay is shown to be mala fide and the person causing delay had obtained certain advantage because of the delay, the Courts in normal course should condone the delay. In **University of Delhi Vs Union of India and others reported in 2019 SCC online 2634**, had held that the Court should be liberal in condonation of delay. The lower Appellate Court had held that the petitioner has not satisfactorily explained the delay of 1093 days. The facts narrated above would show that a large part of the delay is due to the delay on the part of the Court in rectifying the errors that had crept in the decree. The appellate Court has not adverted to this vital aspect.

9. I am therefore of the opinion that the order of refusing the condonation of delay has to be interfered with and accordingly it is set aside. The delay of 1093 days is condoned.



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C.R.P.(MD)No.2774 of 2010(NPD)

I.A.No.67 of 2010 stand allowed.
Miscellaneous Petition is closed.

No costs. Consequently, connected

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The Subordinate Judge, Palani.

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-9547[F] dated
09/03/2021)

Order made in
C.R.P. (MD)No.2774 of 2010(NPD)
MP(MD) No.1 of 2010
08.03.2021

VB (26.03.2021) 3P 3C