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C.R.P.(NPD) Nos.1249 & 2671 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) Nos.1249 & 2671 of 2019
and C.M.P. No.8091 of 2019

G.Ekambara Gurrukal (died)

1. Sarojini Ammal
 2. Ravishankar
 3. Bhaskar
 4. Geetha
 5. Malliga
 6. Sarumathi
 7. Revathi
- petitions

.. Petitioners in both

Vs.

Sri Chennamalleeswara Sri Chennakeavaperumal Devasthanam,
Represented by its Hereditary Trustee
Manali Ramakrishna Mudaliar (died),
Son of Manali Srinvasa Mudaliar,
Having office at No.84, Devaraja Mudali Street,
Park Town, Madras – 600 003
Manali R.Srinivasan,
Office at No.84, Devaraja Mudali Street, Park Town,
Chennai – 1.

.. Respondent in both petitions



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WEB COPY Civil Revision Petition is filed under Section 115 of Civil Procedure

Code, to set aside the fair and decreetal order dated 19.02.2019 in C.M.P.

No.1457 of 2018 and I.A. No.70 of 2019 in A.S. Sr. No.56918 of 2017

passed by the Principal Judge, City Civil Court, Chennai.

For Petitioners : Mr. T.A.Srinivasen
(in both petitions)

For Respondent : Mr. S.D.Ramalingam
(in both petitions)

C O M M O N O R D E R

These two civil revision petitions have been preferred by the defendant in the suit in O.S. No.819 of 1992 on the file of the V Assistant City Civil Court, Chennai, as against the order refusing to condone the delay of 394 days in representing the appeal papers which was filed as against the judgment and decree in O. S. No.819 of 1992 in favour of the respondent plaintiff.



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2. The respondent is a temple represented by its hereditary trustee.

The respondent filed a suit in O.S. No.819 of 1992 for recovery of possession of the suit property and to pay the damages for use and occupation of the suit property. Though the suit was filed in the year 1992, the suit came to be decreed by judgment and decree dated 16.12.2016. From the reading of the judgment, all the issues raised by the lower Court were answered in favour of the plaintiff / first respondent.

3. Aggrieved by the judgment and decree of the lower Court in O.S. No.819 of 1992, the revision petitioners preferred an appeal before the City Civil Court, Chennai. The appeal is yet to be numbered and it is pending in A.S. Sr. No.56918 of 2017. The appeal preferred by the revision petitioner was returned for certain defects. However, the papers were represented with the delay of 394 days. Similarly, the appeal was presented with the deficit Court fee of Rs.1,900/-. The application in I.A. No.70 of 2019 was filed to condone the delay of 444 days in paying deficit Court fee of Rs.1,900/-. The petition to condone the delay in representation in C.M.P. No.1457 of 2018 in A.S. Sr. No.56918 of 2017



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as well as the application in I.A. No.70 of 2019 to condone the delay of 444 days in paying the deficit Court fee of Rs.1,900/- were dismissed by the learned Principal Judge, City Civil Court, Chennai. Aggrieved by the same, the defendants in the suit preferred the above Civil Revision Petitions.

4. In the affidavit filed in support of the petition to condone the delay in representation, the revision petitioners have stated that due to illness, the the third petitioner was unable to contact the petitioners' counsel to instruct him and to hand over certain documents and to sign the papers prepared by the counsel. Apart from other reasons, the economic conditions of the petitioners were also stated as a reason for the delay in representation. Similar explanation was also offered by petitioners in the application to condone the delay of 444 days in paying deficit Court fee of Rs.1,900/-. The lower Court, dismissed both the applications on the ground that the petitioners have not stated any bonafide reasons to condone the delay in representing the appeal. Similarly the application to condone the delay in paying the deficit Court fee was also dismissed on the ground that there was no representation for the petitioners on the day



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when the petition was taken up for hearing. Recording the fact that the petition to condone the delay in representation had been dismissed earlier on merits, the lower Court dismissed the Interlocutory Application to condone the delay in payment of deficit Court fee.

5. From the order of lower Court, it is seen that the lower Court was guided by the merits of the case and the long delay in disposal of the suit. In a petition to condone the delay in representation, the reason for the delay may be for various reasons. The same principles which are to adopted to consider the delay in filing may not be followed in disposing the applications to condone the delay in representation. It is not as if the petitioners have not stated any reasons to condone the delay in representation.

6. This Court is unable to doubt the bonafides of the revision petitioners. It is true that the suit filed in the year 1992 was disposed of only in the year of 2016 and the inordinate delay of more than 444 days caused great prejudice to the respondent. However, that does not mean that the application filed by the revision petitioners can be disposed of



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without giving an opportunity to the revision petitioners to prosecute the appeal on merits. The reason stated by the revision petitioners for the delay in representation cannot be ignored as the facts stated by the revision petitioners are not seriously disputed. This Court is of the view that the Court should not be more rigid. The Court should always consider the applications to condone the delay in representation liberally, so as to advance the cause of justice. The inconvenience caused to the respondent after the suit was decreed in favour of the respondent is a factor that should be considered to compensate the respondent.

7. In such circumstances, this Court is of the view that the delay in representation can be allowed on payment of cost to the respondent. The other application filed by the revision petitioner is to condone the delay of 444 days in paying deficit Court fee was dismissed on the ground that the application to condone the delay in representation had been dismissed. Therefore, this Court is of the view that the revision petition can be allowed by directing the revision petitioners to pay cost to the respondent.



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8. Considering the fact that the respondent is a temple and has spent nearly three decades in the litigation, the Civil Revision Petitions are allowed on condition that the revision petitioners shall pay a sum of Rs.5,000/- in each revision petition to the respondent, within a period of three weeks from the date of receipt of a copy of this order. Upon payment of cost as directed above, the petition in C.M.P. No.1457 of 2018 & I.A. No.70 of 2019 in A.S.Sr. No.56918 of 2017, stands allowed. The learned Principal Judge, City Civil Court, Chennai, shall dispose of the appeal as expeditiously as possible, preferably within a period of three months from the date of restoration of the appeal. The connected miscellaneous petition is closed.

28.01.2022

Speaking order / Non-speaking order
Index: Yes / No
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To

1. The Principal Judge, City Civil Court, Chennai.
2. The V Judge, Assistant City Civil Court, Chennai.



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S.S.SUNDAR, J.,

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