



CRP.No.2872 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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B.M.Sanjeevi

... Petitioner

Vs.

1.Unnamalai Ammal
2.Venuammal

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order dated 20.04.2022 passed in I.A.No.106 of 2014 in Un As. (O.S.No.99 of 2010) the learned Subordinate Judge, Tiruttani and allow the Civil Revision Petition.

For Petitioner : Mr.L.Dhamodharan



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ORDER

This Civil Revision Petition is filed, challenging the order passed by the Court below dismissing the petition to condone the delay of 813 days in filing the appeal.

2. The petitioner herein filed a suit for declaration and injunction against the respondents in O.S.No.99 of 2010 on the file of the District Munsif Court, Pallipattu and the said suit was dismissed on 27.02.2012. Aggrieved by the said judgment and decree, the petitioner filed an appeal before the Subordinate Court, Tiruttani, with a delay of 813 days. In the affidavit filed in support of petition to condone the delay of 813 days, the petitioner had averred that he was working as a Junior Clerk, Tiruvalangadu Sugar Mills, Divisional Office, Athimanjeripatti. Due to his heavy work load in office and his family problem, he was affected with jaundice for the past two years. It was also averred by him that he had taken native treatment at Walajapet for nearly 1½ years. Since there was no improvement, he proceeded to Triplicane and he had taken native treatment for six months. Even then there was no improvement



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and hence, he returned to walajapet and continued his native treatment there. It was further averred that after recovering from illness of jaundice, he had contacted his counsel and enquired about the stage of the case and then only he acquired the knowledge about the dismissal of the suit and immediately, he had filed the appeal with the delay of 813 days.

3. The petition filed by the revision petitioner was seriously opposed by the respondents by filing their counter. The respondents in their counter affidavit has stated that the averments in the affidavit of the petitioner that he was suffering with jaundice for a period of 2 years was unbelievable. It was also specifically averred by the respondents that the petitioner was regularly attending his work at Sugar Mills, Tiruvalangadu. The respondents also averred that the petitioner was not ailing but healthy at the relevant point of time.

4. Before the Court below, neither the petitioner nor the respondents examined any witnesses. The respondents herein filed attendance register of the petitioner, which was maintained by the employer of the



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petitioner, namely, Tiruttani Co-operative Sugar Mills Limited, for the period from January 2012 to December 2014.

5. The Court below based on the attendance register filed by the respondents came to the conclusion that the petitioner had been regularly attending his office at the relevant point of time and consequently discarded the claim of serious illness and dismissed the petition seeking condonation of delay. Aggrieved by the said order, the petitioner has come before this Court by way of this revision.

6. The learned counsel for the petitioner contended that he was prevented from filing the appeal in time due to the illness as averred by him in his affidavit. The learned counsel for the petitioner further submitted that while considering the delay petition filed under Section 5 of the Limitation Act, the Court has to take liberal approach because dismissal of the condonation of delay petition will result in rejection of the substantial rights of the parties.

7. The learned counsel for the petitioner relied on the decisions in



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N.Balakrishnan Vs. M.Krishnamurthy, reported in ***1998 (7) SCC 123*** and

Ram Nath Sao @ Ram Nath Sahu and others, Vs. Gobardhan Sao &

Others, reported in ***2002 (1) CTC 769***, in support of his contentions.

8. The petitioner herein in his affidavit filed in support of the condone delay petition had explained that the delay of 813 days was mainly due to the fact he was affected by jaundice and consequently, he could not present the appeal in time. The judgment in the original suit was delivered on 27.02.2012. The certified copy of the judgment produced in the typed set of papers would suggest that the copies were made ready on 22.06.2012. The appeal appeared to have been filed during October 2014. The petitioner in his affidavit averred that he was suffering from jaundice nearly for a period of 2½ years. The reason assigned by the petitioner in explaining the delay nearly for a period of 2 ½ years is not acceptable to this Court.

9. The petitioner failed to appear before the Court and give any evidence



in support of his contention or examined any witnesses to explain the delay.

When he stated that he had taken native treatment, he could have proved the same by examining any witnesses or producing the certificate from the native Doctor.

10. In the absence of any oral and documentary evidence in support of the contention of the petitioner, this Court is unable to accept that due to jaundice, the petitioner has filed the appeal with a delay of nearly 2 ½ years.

11. Before the Court below, the respondents produced the attendance register maintained by the employer of the petitioner as Ex.R1. The perusal of the same would suggest that the petitioner had been attending his office regularly from January 2012 to December 2014. Therefore, it is clear that the averments made by the petitioner that he was affected with jaundice and he had taken treatment at Walajapet for a period of 2 ½ years and in Triplicane nearly for a period of six months all are falsified by the documentary evidence produced by the respondents.



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12. It is true that the Court should take liberal approach while considering the condone delay petition filed under Section 5 of the Limitation Act. It is also true that when there is a conflict between the procedural law and substantial rights of the parties, later shall prevail. But however, the delay is more than 2 ½ years in filing the first appeal. When the petitioner was in a position to attend the office work regularly, he cannot say that he was prevented from filing the appeal due to his illness. A person, who comes with clean hands can request the Court to exercise its discretion.

13. In the case on hand, the petitioner has not approached the Court with clean hands. In the absence of any oral and documentary evidence in support of the stands taken by the revision petitioner, the Court below rightly had taken into consideration the attendance register produced by the respondents, which was maintained by the employer of the petitioner, came to the conclusion that the delay was not properly explained. Even otherwise, the petitioner failed to prove his averments in the affidavit by leading any oral and documentary evidence independently. Viewing from any angle, I do not find



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any illegality or irregularity in the order passed by the Court below.

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14. Accordingly, this Civil Revision Petition is dismissed. No costs.

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Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Tiruttani.
- 2.The District Munsif Court, Pallipattu.



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S.SOUNTHAR, J.

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