



WEB COPY



C.R.P(NPD)No.1132 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(NPD).Nos.1132 of 2017

and

CMP.No.5443 of 2017

Kulasekaran

..Petitioner

Vs.

The Secretary,
Tiruchengode Co-operative Housing Society Ltd.,
Door No.2/2A, Velur Road,
Tiruchengode Town and Taluk,
Namakkal District.

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order of the Sub-ordinate Court, Tiruchengode dated 22.11.2016 in I.A.No.63 of 2013 in A.S.No.77 of 2008.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.S.Kesavan

ORDER

This Civil Revision Petition has been filed, questioning the order in I.A.No.63 of 2013 in A.S.No.77 of 2008, which Interlocutory Application had been dismissed by order dated 22.11.2016.



C.R.P(NPD)No.1132 of 2017

WEB COPY

2.The plaintiff in O.S.No.415 of 1992, aggrieved by dismissal of the suit by judgment and decree dated 31.01.2006, which suit was on the file of the District Munsif Court, Tiruchengode, had filed an appeal in A.S.No.77 of 2008, which appeal was on the file of the Sub-Court at Tiruchengode. The said appeal did not proceed in its normal course. It was dismissed for default. Thereafter, an application was filed to restore the appeal. That particular application was returned for some defects. The petition was thereafter, represented namely, application to restore the appeal was represented with the delay of 1166 days. Application seeking to condone the delay of 1166 days was I.A.No.63 of 2013. Among the reasons given for the delay in representation was that the papers had been mingled in the Office of the Advocate with other records. A counter had been filed putting that particular reason to strict proof.

3.The learned Sub-judge, who must have been quite frustrated on the application filed to represent an application, which application was filed to restore an appeal, which appeal had been dismissed for non-prosecution



WEB COPY

had naturally thought that it will only be a interest of justice that the reasons for delay given namely, the papers had been mixed up with other bundles cannot actually be accepted by the Court. That is a reason, which can neither be proved nor be disproved. It is a reason which can only be stated on oath. It can be believed or disbelieved. The learned Sub-Judge therefore, went along and dismissed the application stating that each days delay of the 1166 days had not been explained. It naturally meant that the learned Sub-judge expected the affidavit to disclose the date on which, the papers were actually mingled with the other bundles, the date on which such mix up of records were detected and when the papers were actually found out. This again is a fact which can never be stated because the date on which the records got mixed with the other case records in the Office of a Advocate, if it had been known then, the papers would have been restored back to the original files immediately. Since it had happened owing to inadvertence, those dates can never be stated in affidavit or even be stated during the course of oral evidence. The only saving grace for the revision petitioner is that the affidavit in I.A.No.63 of 2013, had been filed by the Advocate himself.



C.R.P(NPD)No.1132 of 2017

4. Therefore, to a little extent, statements made on oath by the learned counsel, who realises the seriousness of the profession and the dignity of the profession, can be taken on their face value. Let me take that particular stand and set aside the order in I.A.No.63 of 2013.

5. The learned Sub-judge had relied on a judgment reported in **2013 (6) MLJ 219** in **Muniyan Vs. Eromia and another**, which was an application for restoration of an appeal. A delay in representation is primarily an issue between the Registry and the Advocate, who had filed the application. The Registry had returned the papers for compliances and in representing the same, there has been a delay. It cannot be equated with an application filed with delay in filing an appeal, which invites strict interpretation of application of Section 5 of the Limitation Act.

6. In view of the aforesaid reasons, I would allow C.R.P.No.1132 of 2017 and set aside the order in I.A.No.63 of 2013 dated 22.11.2016 and condone the delay of 1166 days in representing the application to restore A.S.No.77 of 2008. That particular application to restore A.S.No.77 of 2008 may now be considered by the Registry and if it is otherwise in order,



C.R.P(NPD)No.1132 of 2017

numbered by the Registry and taken up for consideration by the learned Sub-Judge, Tiruchengode.

7.With the above observations, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

8.Even though this Court had allowed the order in I.A.No.63 of 2013, which application had been filed to represent an application to restore the appeal in A.S.No.77 of 2008, whenever such application for restoration comes up for consideration before the Sub-judge, Tiruchengode and if the learned Sub-judge is of the opinion that A.S.No.77 of 2008 can be restored then, the said order should also include imposition of costs on the appellant / plaintiff, since the suit had been filed in the year 1992 and the appeal filed in the year 2008, which appeal is now to be heard in the year 2022. Therefore, the learned Sub-Judge may impose appropriate costs at that particular stage.

21.03.2022

kkn

Index:Yes/No

Internet:Yes/No

5/6



C.R.P(NPD)No.1132 of 2017

Speaking/Non-speaking order

WEB COPY

C.V.KARTHIKEYAN, J.

KKN

To:-

The Sub-Court,
Tiruchengode.

C.R.P(NPD).Nos.1132 of 2017
and
CMP.No.5443 of 2017

21.03.2022