



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(MD)No.609 of 2020

and

C.M.P.(MD)No.3972 of 2020

Ramachandran ... Petitioner/Petitioner/Appellant
-vs-

T.Edwin Antony Singh ... Respondent/Respondent/Respondent

Prayer :- Petition filed under Section 115 of the Civil Procedure Code, to allow the above civil revision petition and consequently to revise the fair and decreetal order of the learned District Judge of Kanyakumari District at Nagercoil made in I.A.No.1 of 2019 in A.S (SR) No.1162 of 2019 dated 07.02.2020 filed as against the decree and judgment of the learned I Additional Subordinate Judge, Nagercoil, Kanyakumari District made in O.S.No.229 of 2016 dated 16.12.2017 forthwith.

For Petitioner : Mr.S.Palani Velayutham

For Respondent : Mr.M.Ashok Padmaraj

ORDER

The defendant is the revision petitioner before this Court challenging the dismissal of his application to condone the delay of 597 days in filing the appeal.

2.The facts in brief are follows:-

(i) The respondent had filed the suit in O.S.No.229 of 2016 on the file of the learned I Additional Subordinate Judge, Nagercoil for recovery of a sum of Rs.5,40,750/- with interest at 9% per annum from the date of suit till the date of payment. It is the case of the respondent/plaintiff that he had paid a sum of Rs.5,00,000/- to the revision petitioner herein for arranging placement for him with the Transport Department. Though the amount had been paid, the revision petitioner had not arranged for the job and consequently, the respondent had demanded the refund of the money, for which, the revision petitioner had issued two cheques, which when presented for collection was dishonored. Therefore, the respondent had filed the above suit.



(ii) The revision petitioner filed a written statement denying the allegation. He would contend that one Thangaraj was a close relative of the respondent, who was also a close friend of the defendant. This Thangaraj would often visit the revision petitioner's house and on one occasion had stolen the two cheques which have been misused by the respondent/plaintiff. When the revision petitioner had received the summons, he had met the said Thangaraj, who assured that the cheques would be returned to him. Believing his words, the revision petitioner had not taken any legal action. Thereafter, the suit was decreed by judgment and decree dated 16.12.2017. The revision petitioner /defendant had filed an appeal against the said judgment and decree with the delay of 597 days.

(iii) In the affidavit filed in support of the application, the revision petitioner had contended that he was undergoing treatment for paralysis and therefore, he was unable to give instruction to his counsel, as a result of which, the delay had been caused. The respondent had objected to the same stating that the reason given is vague and not believable.

(iv) The learned Principal District Judge, Kanyakumari at Nagercoil, dismissed the said application stating that no proof had been filed by the petitioner to substantiate the case that he was suffering from paralysis, as a result of which, the delay had occurred. Challenging the said order, the revision petitioner is before this Court,.

3.Heard the learned counsel appearing on either side and perused the records.

4.In the typed set of papers, the petitioner has enclosed a medical certificate issued by the Sree Mookambika Heart Institute stating that this certificate would prove that the revision petitioner was suffering from Paralysis and as a result of which, he could not file the application in time. However, a perusal of the said document would indicate that it has been issued on 09.01.2020. The petitioner had only undergone Cardiac Catheterization. The Judgment in O.S.No.229 of 2016 was passed on 16.12.2017 and the appeal has been filed on 01.10.2019. Therefore, the medical certificate filed by the revision petitioner does not help the petitioner in proving the contention raised in the affidavit filed in support of the condone delay petition. The certificate only would go to show that the petitioner has come forward with an absolutely false statement in the affidavit filed in support of the condone delay petition.

5.In the above circumstances, I do not find any reason for interfering with the order passed by the learned Principal District



Judge, Kanyakumari at Nagercoil and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1. The Principal District Judge,
Kanyakumari District at Nagercoil.

2.The I Additional Subordinate Judge, Nagercoil,
Kanyakumari District

+1 CC to M/s.M.ASHOK PADMARAJ, Advocate (SR-2482[F]
dated 25/01/2022)

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TR(17.02.2022) 3P 4C