



CRP(MD)No.1147 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 11.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.1147 of 2019

CMP(MD)No.7162 of 2019

S.Raju

... Revision
Petitioner

versus

1. Karuppayee @ Chinnapillai
2. K.R.Selvam
3. Sigappi Ammal

... Respondents

Civil Revision Petition filed under Section 115 of C.P.C. against the order dated 11.01.2019 passed by the learned Principal Sub Judge, Madurai, in I.A.No.157 of 2017 in unnumbered A.S. filed in the year 2017.

For Revision Petitioner : Mr.K.K.Samy
For R1 and R2 : Mrs.Jessi Jeeva Priya

ORDER

This Civil Revision Petition is filed against the order dated 11.01.2019 passed by the learned Principal Sub Judge, Madurai, in



CRP(MD)No.1147 of 2019

I.A.No.157 of 2017 in unnumbered appeal suit filed in the year 2017.

WEB COPY

2. The revision petitioner filed an appeal suit, against the Judgment and Decree, dated 15.04.2016, passed by the learned District Munsif cum Judicial Magistrate, Vadipatti, in O.S.No.92 of 2010, before the Principal Sub Court, Madurai, along with an interlocutory application in I.A.No.157 of 2017 to condone the delay of 355 days in filing the appeal suit stating that he received the copy of the Decree and Judgment only on 22.06.2016 and after receiving the Judgment copy, he could not meet his counsel owing to certain illness and after recovery, he met his counsel on 05.02.2017 and filed the above appeal suit with the delay of 355 days in filing the appeal suit. The learned Principal Sub Judge, Madurai, considered that the said interlocutory application has been filed without assigning any valid reason and therefore, dismissed the said application. Aggrieved over the same, the present Civil Revision Petition is filed.



CRP(MD)No.1147 of 2019

3. The respondents 1 and 2 herein filed the suit in O.S.No.92 of 2010 before the District Munsif Court, Vadipatti for partition and permanent injunction against the revision petitioner and another. The revision petitioner contested the suit, filed his written statement and also cross examined the plaintiffs. When the suit was posted for defendant/revision petitioner side evidence on 10.06.2014, he did not appear, claiming that he suffered with typhoid fever and therefore, the suit was decreed *ex parte* on 10.06.2014. Against the *ex parte* decree, the revision petitioner filed an interlocutory application in I.A.No.257 of 2014 to set aside the *ex parte* decree and the same was allowed on 10.09.2014 with cost of Rs.250/- to be paid to the plaintiffs on 17.09.2014, failing which, the said application shall stand dismissed automatically. Since the cost was not paid as directed by the Court, the order passed in I.A.No.257 of 2014 became void. Thereafter, the revision petitioner filed an application in I.A.No.420 of 2014 under Section 148 C.P.C. to extend the time and the same was dismissed on 22.12.2014, against which, the revision petitioner filed a Civil Revision



CRP(MD)No.1147 of 2019

Petition before this Court in CRP(MD)No.2452 of 2016 and this Court, vide order dated 02.12.2016, dismissed the said petition with liberty to work out his remedy before the appropriate Court in the manner known to law, if it is permissible under law. Thereafter, the revision petitioner filed an appeal suit with the delay of 355 days without any valid reason. Therefore, the application filed for condoning the delay in filing the appeal was dismissed by the Appellate Court, as no valid reason has been assigned for the inordinate delay.

4. The learned counsel for the revision petitioner submits that the trial Court failed to see the case of the revision petitioner and was persisting in sticking to its decision, without considering the memo filed by the revision petitioner for extension of time on the day of expiry of time given for payment of costs. He further submits that though the revision petitioner has placed all the materials for deciding the case on merits before the appellate Court, the appellate Court is not correct in dismissing the application to condone the delay of 355 days



CRP(MD)No.1147 of 2019

in filing the appeal suit. He further submits that the suit was filed for partition and if the revision petitioner is not provided with an opportunity to defend his case, then, he will suffer irreparable loss. Grounds to be added.

5. The learned counsel for the respondents 1 and 2 submits that though the suit was filed in the year 2010, the defendant/revision petitioner is dragging the proceedings in one way or other.

6. This Court considered the rival submissions made.

7. The revision petitioner, who appeared in the suit, has not adduced any evidence when the case was posted for defendant side evidence and allowed the suit to be decreed *ex parte*. The interlocutory application filed to set aside the *ex parte* decree was allowed on payment of cost of Rs.250/-. But, the revision petitioner has not paid that amount and therefore, the said order became void. The



CRP(MD)No.1147 of 2019

interlocutory application filed by the revision petitioner to extend the time was filed belatedly and therefore, the trial Court dismissed the said application and the Civil Revision Petition filed by the revision petitioner was also dismissed. Even thereafter, the revision petitioner filed the appeal suit along with the application to condone the delay of 355 days in filing the appeal suit without assigning any valid reason. Therefore, the appellate Court has rightly dismissed the condone delay application. Considering the delay in filing the appeal suit and also the conduct of the revision petitioner, this Court is not inclined to interfere with the order of the Appellate Court.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.07.2022

ogy

Index : Yes / No

Internet: Yes / No.



CRP(MD)No.1147 of 2019

WEB COPY

To

1. The Principal Sub Court,
Madurai.



WEB COPY



CRP(MD)No.1147 of 2019

B.PUGALENDHI, J.

ogy

CRP(MD)No.1147 of 2019

11.07.2022