



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Fourteenth day of March Two Thousand and Twenty Two

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PRESENT

The Hon`ble Mr.Justice R.SUBRAMANIAN
and
The Hon`ble Mr.Justice N.SATHISH KUMAR

CMP(MD) No.10799 of 2021
in
AS(MD) SR.No.37110 of 2021

1 V.VADIVEL (DIED)

2 V. VIJAYA

3 JAYACHANDRAN VADIVEL

4 JAYAPRAKASH VADIVEL

5 NITHYA

... PETITIONER/APPELLANT

PETITIONERS 2 TO 5 ARE BROUGHT ON RECORD
AS LRS OF THE DECEASED SOLE PETITIONER
VIDE COURT ORDER DATED 23.02.2022 MADE IN
CMP(MD) No.901/2022 IN AS(MD)
SR.No.37110/2021 BY RSMJ & NSKJ.

Vs

R.NACHIMUTHU

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone to delay of 6363 days in filing the above Appeal in A.S. (MD) (SR)No. 37110 of 2021.

PRAYER IN AS(MD)SR.No.37110 of 2021:

Pleased to set aside the Judgment and Decree dated 30.04.2022 passed in O.S.No.10 of 1999 on the file of the Court of Subordinate Judge, Karur.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.T.LAJAPATHI ROY, Advocate for the petitioner and of Mr.S.VELLAICHAMY, Advocate on behalf of the Respondent, the Court made the following order:-

<https://hcservices.ecourts.gov.in/hcservices/>



This petition is filed seeking to condone the delay of 6363 days in filing the above appeal against the judgment and decree in O.S.No.10 of 1999 on the file of the Sub-Court, Karur, dated 30.04.2002.

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2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The brief facts that led to the filing of the appeal are as follows:

(i) The suit in O.S.No.10 of 1999 was filed by the respondent seeking a money decree for a sum of Rs.14,94,877/- due and payable under agreement dated 08.11.1996. Though the petitioner / defendant filed a written statement, he did not let in any evidence in support of his case. Therefore, the learned Subordinate Judge, Karur, decreed the suit on 30.04.2002. Treating it as an ex-parte decree, the petitioner herein filed an application in I.A.SR.No.88 of 2002 under Order 9 Rule 13 r/w Section 151 of C.P.C. The said application was rejected by the trial Court on the ground that the decree is one on merits. Therefore, the application under Order 9 Rule 13 C.P.C., would not lie. The said rejection order was challenged by the petitioner in C.R.P.No.162 of 2003. This Court had disposed of the said C.R.P., on 19.02.2003 with the following observations:

"In such a circumstance, I am in agreement with the conclusion arrived at by the Court below and I do not find any error of law or jurisdiction for interference; accordingly the Revision is dismissed. However, if the decree was not a contested one, it is open to the petitioner to file appropriate petition before the same Court, by placing acceptable materials."

(ii) Taking advantage of the observations made by this Court in the order made in C.R.P.No.162 of 2003, the petitioner filed an application in I.A.No.212 of 2002, seeking to set aside the ex-parte decree along with an application to condone the delay of 568 days in filing an application to set aside the ex-parte decree in I.A.No.96 of 2005. Since the value of the suit was above Rs.10 lakhs, the application in I.A.No.96 of 2005 was heard by the District Judge, Karur. The said application came to be allowed on 06.12.2005 on payment of cost. Aggrieved by the order made in I.A.No.96 of 2005, the respondent herein filed C.R.P(MD)No.98 of 2006 before this Court.

(iii) This Court after considering the facts and circumstances of the case, concluded that the original decree is a contested decree and not an ex-parte decree and therefore, the application seeking to set aside the ex-parte decree itself is not maintainable. On the said conclusion, this Court allowed the revision petition on

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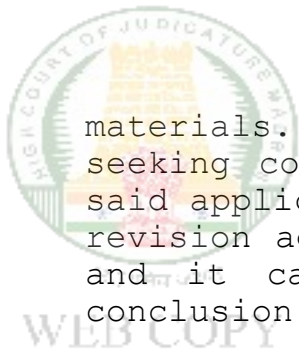
01.12.2016. Thereafter, the petitioner filed an appeal against the original decree before the District Court, Karur, with an application for condonation of delay of 66 days in filing the appeal. The learned Principal District Judge, Karur, returned the appeal on the ground that since the decree was prior to the amendment of the Tamil Nadu Civil Courts Act (Amendment Act 2003) (Act 1 of 2004), an appeal would lie to the High Court and not to the District Court. In view of the said return, the petitioner has come up with this appeal along with an application for condonation of delay of 6363 days.

4. According to the petitioner, he has been bonafidely prosecuting the application for setting aside the ex-parte decree, in view of the observations made in C.R.P.No.162 of 2003. Though he filed an application to set aside the the ex-parte decree along with an application to condone the delay and succeeded in getting the delay condoned, this Court reversed said order only on 01.12.2016. Thereafter, he filed an appeal before the District Court on 09th March, 2017. Therefore, according to the petitioner, he has been bonafidely prosecuting the matter and the delay was occurred only due to the pendency of the civil revision petitions in C.R.P.No.162 of 2003 and C.R.P(MD)No.98 of 2006.

5. The learned counsel for the petitioner would also submit that the delay is neither wilful nor wanton. He would contend that the petitioner cannot be denied of a statutory appeal remedy because he was misled by the observations of this Court made in C.R.P.No.162 of 2003, which was followed by an order condoning the delay in seeking ex-parte decree in I.A.No.96 of 2005 dated 06.12.2005. It is only upon the order condoning the delay being reversed on 01.12.2016, the petitioner realized that he should have filed an appeal before the District Court. Such an appeal was filed on 09th March, 2017 before the District Court, Karur. The Principal District Judge, Karur, returned the same on 22.03.2021.

6. Though a counter has been filed by the respondent stating that the petitioner has not been diligent in prosecuting the case and he has also been criticized by this Court for having delayed the execution proceedings, we find that there is some merit in the contention of the learned counsel for the petitioner.

7. Originally the trial Court took a stand that the decree is one on merits and therefore, the application under Order 9 Rule 13 would not lie. We must at this juncture point out that the application under Order 9 Rule 13 was filed within the time allowed under the Limitation Act. That order was challenged before this Court. This Court while dismissing the revision petition after agreeing with the conclusion of the trial Court, had observed that if the decree was not a contested one, it is open to the petitioner to file an application before the same Court by placing relevant



materials. This observation led to the filing of an application seeking condonation of delay in I.A.No.96 of 2005. Actually, the said application was allowed by the District Court on 06.12.2005 and revision against the said order was pending for almost eleven years and it came to be disposed of on 01.12.2016, again on the conclusion that the decree is one on merits.

8. From the above, it could be seen that the petitioner has been prosecuting the case before the wrong Court and Section 14 of the Limitation Act, would come to the aid of the petitioner. This Court is of the view of that the petitioner has made out sufficient cause for the condonation of delay though the delay is very long. However, in order to protect the interest of justice, we feel that the delay could be condoned on certain conditions. The decree was passed in the year 2002 for Rs.14,94,877/- which almost 20 year gone now. Therefore, the delay will stand condoned on condition that the petitioner deposits a sum of Rs.10,00,000/-(Rupees Ten Lakhs Only) to the credit of the suit in O.S.No.10 of 1999 on the file of the Sub-Court, Karur, within a period of eight weeks from today, failing which, this Civil Miscellaneous Petition will stand dismissed.

9. Post for compliance on 06.06.2022.

sd/-

14/03/2022

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/ /2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE SUBORDINATE JUDGE,
KARUR.

+1. C.C. to M/S.T.LAJAPATHI ROY Advocate SR.No.2019

+1. CC to Mr.M.V.VENKATASESHAN, Advocate SR.No.2032

ORDER

IN

CMP(MD) No.10799 of 2021
in

AS(MD) SR.No.37110 of 2021

Date :14/03/2022

SS/SBN/SAR:III/18.03.2022 : 4P/4C