



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD)No.1586 of 2017

WEB COPY

S.Ramachandran ... Petitioner/Petitioner/Appellant/
Plaintiff

-vs-

1.K.Erulappan
2.K.Ayyanar
3.Sumathi Udhayakumar ... Respondents/Respondents/Respondents/
Defendants

Prayer :- Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order made in I.A.No.88 of 2015 in A.S.No.6 of 2009 on the file of I Additional District Court, Madurai, dated 23.03.2016 and allow the revision petition.

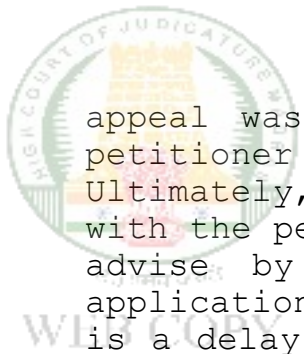
For Petitioner : Mr.M.V.Venkataseshan
For R1 and R2 : No appearance
For R3 : Mrs.AL.Gandhimathi

ORDER

This Civil Revision Petition has been filed against the order dated 23.03.2016 passed in I.A.No.88 of 2015 in A.S.No.6 of 2009 on the file of the I Additional District Court, Madurai.

2.The revision Petitioner, who is the plaintiff filed a suit in O.S.No.1342 of 2003 for the relief of specific performance and the same was dismissed by the trial court on 09.09.2018 on merits. Aggrieved over the same, the revision petitioner herein has preferred an appeal in A.S.No.6 of 2009 and the same was dismissed for default on 01.09.2009. Thereafter, the revision petitioner herein filed the above application before the Court below for condonation of delay of 1956 days in filing the application to restore the appeal in A.S.No.6 of 2009. By order dated 23.03.2016, the Court below, after hearing both sides, dismissed the said application. Aggrieved over the same, the present Civil Revision Petition has been filed.

3.According to the petitioner, the counsel, who conducted the appeal, was expired during the pendency of the appeal and the petitioner was not informed about the death of the counsel. He came to know about the death of the counsel only after one year. After contacting the clerk of the counsel, he was informed that



appeal was dismissed for default on 01.09.2009. Thereafter, the petitioner has taken further steps to restore the appeal. Ultimately, the petitioner filed the petition for restoration along with the petition to condone the delay of 1956 days. Due to the ill advise by his Advocate, he is not able to file appropriate application to restore the A.S.No.6 of 2010 in time. Hence, there is a delay and the same is to be condoned. However, these aspects have not been considered by the Court below in proper perspective. Without considering the reasons assigned by the petitioner, the Court below dismissed the above application and the same is liable to be set aside.

4.On the other hand, Mr.S.Vellaichamy, learned counsel appearing for the respondent would submit that the Court below has passed the detailed order and it has considered all the aspects in the proper prospective. The well considered order need not be interfered by this court. Therefore, the present revision is liable to be dismissed.

5.Heard the learned counsel appearing on either side and perused the materials available on records.

6.The appellant filed the above application before the Court below to restore the appeal in A.S.No.6 of 2009 along with condone delay of 1956 days. No doubt, it is the duty of the appellant to explain each and every day of the delay. In the present case, it is an admitted fact that the petitioner came to know about the death of his counsel who appeared before the Court below, only after one year. However, after that he has not taken any steps and the delay has also not been explained. All these facts have been considered by the Court below and passed the detailed order. The relevant portions of the order of the Court below are extracted hereunder:-

15.Therefore, this court is obliged to consider this petition based upon the guidelines laid down by the Hon'ble Apex Court. This Court has already stated that the petition itself is vague and does not mention any proper reasons for the delay supported by either dates or events. Further without even giving an SR number, it is submitted that the petiton for condonation filed before this Court in 2010 was not numbered for the last 5 years. Apart from the above reasons, no other reason has been given to explain the delay caused. Hence, this Court is of the opinion that the petitioner lacks bonafies in approaching this Court. Further the case before the trial Court was dismissed on merits. Further, even according to the petitioner, who examined himself as P.W.1 before the case was taken up for hearing, he visited the counsel for about 4 to 5 times in 2009. such being the case, there is no reason stated as to why he was prevented from visisting the counsel thereafter. It is pertinent here to point out



that the petitioner herein has approached this Court after an inordinate delay of more than 6 years, which is also a circumstance to be taken into account. Though the length of the delay is not a reason to reject the petition, this Court is of the view that no proper explanation was given by the petitioner to explain the delay caused.

16. In light of the above discussion, this Court is of the view that the petitioner has not come forward with any plausible explanation for the delay in filing the restoration application. All the reasons set out in the petition are vague and shows the lackadaisical attitude of the petitioner. Further this Court is of the opinion that no sufficient cause has been shown by the petitioner herein to satisfy this Court to invoke its discretionary power to condone the delay in filing the petition. Hence, in the light of the above circumstances, this Court is not inclined to allow this petition. Accordingly, Point No.1 and Point No.2 are answered.

7. In view of the above, this Court is of the considered view that the well considered order of the Court below need not be interfered with. That apart, the petitioner has not explained the delay caused and this Court does not find any reason to interfere with the order of the Court below. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2022

Sub Assistant Registrar (CS)

cp

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

The I Additional District Judge,
Madurai.



COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-11386[F]
dated 11/03/2022)

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-11107[F] dated 10/03/2022)

C.R.P.(MD)No.1586 of 2017

Dated: 09.03.2022

SRR(CO)

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