



C.R.P.No.1182 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1182 of 2021

Gunduveedu Vinayagam (Died)

1. Chokalingam
2. Chinnaraj
3. Kasi

... Petitioners

Vs.

1. Chidambaram
2. Amirthalingam
3. Soundarajan
4. Purusothaman

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order in I.A.No.1 of 2019 in A.S.No.Nil of 2019 dated 31.01.2020 passed by the learned Principal Subordinate Judge, Vellore

For Petitioners : Mr.V.Antony Elangovan Raj

For Respondents : Notice served, Name Printed
No appearance



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ORDER

The present Civil Revision Petition has been filed to set aside the order in I.A.No.1 of 2019 in A.S.No.Nil of 2019 dated 31.01.2020 passed by the learned Principal Subordinate Judge, Vellore.

2. The brief facts of the case are as follows:-

The petitioners have filed I.A.No.1 of 2019 to condone the delay of 702 days in filing the appeal memorandum. The reasons ascribed by the petitioners is that after the receipt of the notice in E.P.NO.37 of 2018, the 1st petitioner came to know the Judgment passed in the original suit. The previous counsel on record has not informed the disposal of the suit to the petitioners and due to the age old ailments and on account of jaundice, the 2nd petitioner could not move from his house, therefore, the petitioners could not file the appeal memorandum in time and now, there is a delay of 702 days in filing the application. The court below rejected the same, as against which, the present petition.

3.The learned counsel for the petitioners would submit that the court below failed to decide liberally the application to condone the delay of 702 days so as to render substantial justice. The trial court ought not to have insisted upon substantial material in support of pleading and should have



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allowed the application by exercising the discretion of court by fixing liberal approach to the pleadings.

4. Further, the learned counsel for the petitioners would submit that the trial court ought to have allowed the application, since the revision petitioners have shown sufficient cause for the day by day delay and immediately filed the application after the receipt of the notice in the execution proceedings without any further delay, hence sufficient cause assigned by the petitioners are bonafide, thereby sought to allow the present Revision.

5. Notice to the respondents were served on 05.07.2021 and private notice was also served on 08.07.2021, there is no representation for the respondents and hence the name of the respondents were ordered to be printed in the cause list on 14.07.2021 and accordingly, name has been printed in the cause list. However, there is no representation for the respondents in person or through learned counsel.

6. As far as the present case is concerned, it transpires from the



grounds filed by the petitioners that the delay of 702 days in preferring the A.S.No.Nil of 2019 had occurred mainly due to non-communication about the Judgment passed in the suit and further the 1st petitioner, who was well aware of the case had suffered from Jaundice and could not move from his house, as claimed by the Petitioners/Appellants.

7.It is to be noted that the existence of a sufficient case in not initiating the proceeding in time is a condition which is primarily to be satisfied before the Court of Law. Indeed, a Court of Law can exercise its Judicial Discretion either to grant or to refuse to grant an extension of time. However, if the Court of Law is subjectively satisfied as to the reasons assigned in the affidavit in regard to the delay to that had occurred in question, then, it can condone the delay so as to advance the cause of substantial justice.

8. Indisputably the condonation of delay is not an empty formality, because of the reason that a valuable vested right had accrued to the other side.

9. At this juncture, the Court pertinently cites the decision of the



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Hon'ble Supreme Court in ***H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another [2015 (1) SCC at page 680 and at Special page 681]*** wherein in paras 19 & 24 it is observed as follows:

“19.It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the party concerned or whomsoever was entrusted with the filing of the papers into the Registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the party concerned from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals.

24.The failure of the respondents in not showing due diligence in filing of the appeals and the



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enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona-fides in its approach.”

11.Also in the aforesaid decision at page 682 in para 25 it is observed as follows and held as follows:-

“25.Thus, total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained.”

10. In view of the aforesaid observations of the Hon'ble Supreme



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Court in the decision cited supra and in so far as the present petition is concerned, this Court is of the considered opinion that the petitioners have not stated that what action they have taken against their previous counsel for the mistake committed in not performing his duty and the averments stated by the petitioners that the 1st petitioner, who was well aware of the case had suffered from Jaundice and could not move from his house, have not been proved with substantial evidence and hence the reason stated for the delay of 702 days in question are indeed unacceptable and not bonafide ones. Inasmuch as the delay of 702 days in issue is not based on acceptable reasons, this Court is not in favour of adopting a liberal view in the matter especially in the light of the facts and circumstances of the instant case.

In view of the above the order passed by the court below in I.A.No.1 of 2019 dated 31.01.2019 does not warrant any interference and the present Revision petition is dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
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V.BHAVANI SUBBAROYAN, J.,

ssd

To
The Principal Subordinate Judge,
Vellore

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