



C.R.P.(MD).No.807 of 2019

-BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(NPD)(MD)No.807 of 2019

S.Vargheese

... Petitioner/Petitioner/Appellant

-VS-

1. M.Subromanian
2. Bhama
3. M.Anthonimuthu Nadar
4. M.Silivaimuthu Nadar

... Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C, against the fair and decreetal order in I.A.No.36 of 2014 in A.S.S.R.No.994 of 2013, dated 09.01.2019 passed by the learned Subordinate Judge, Padmanabhapuram, dismissing the condone delay petition.

For Petitioner : Mr.S.Sankar

For Respondents : No appearance

ORDER

The present Civil Revision Petition has been filed by the petitioner under Section 115 of C.P.C, against the fair and decreetal order in I.A.No.36 of 2014 in A.S.S.R.No.994 of 2013, dated 09.01.2019 passed by the learned



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Subordinate Judge, Padmanabhapuram, dismissing the condone delay petition.

2. The petitioner herein is the plaintiff and the respondents are the defendants before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The learned counsel appearing for the petitioner would submit that the petitioner/plaintiff has filed the suit for the relief of declaration and permanent injunction, which was ultimately dismissed on 08.03.2013. He would further submit that though the learned counsel obtained certified copy of the said order on 30.04.2013, due to the illness of the petitioner, he was not able to file appeal against the said dismissal order of the judgment and decree dated 08.03.2013 in time and hence, there was a delay of 129 days. He would further submit that the respondents did not file any counter and they were set exparte. But still the Court below had dismissed the application by considering the merits of the appeal.



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5. Despite the name of the respondents is printed in the cause list, no one appeared before this Court on behalf of them.

6. This Court has given anxious consideration to the submission of the learned counsel for the petitioner.

7. As rightly submitted by the learned counsel for the petitioner, the respondents herein have not filed any counter before the Court below, objecting the grounds raised by the petitioner. On perusal of the order of the Court below, it is seen that the Court below by considering the merits of the appeal, dismissed the delay condonation application. It is well settled principle of law that, while considering the application for condonation of delay, the Court has to only see as to whether the application contains sufficient cause to condone the delay, and not on the merits of the appeal. And it is also pertinent to mention here that, when the application being filed to condone the delay in filing the appeal, such an application should be liberally considered.



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8. In this regard, it is pertinent to mention the judgment of this Court in ***C.R.P(MD) No.2774 of 2010 (NPD) (P.Arumugam Vs.S.P.Kuzhanthivel).***

Paragraph No.8 is as follows:

“ 8. I have heard the rival submissions. The Honourable Supreme Court and this Court have been repeatedly pointing out that the Courts should adopt liberal approach in matters of delay, particularly the delay in filing the appeal. Unless the delay is shown to be mala fide and the person causing delay had obtained certain advantage because of the delay, the Courts in normal course should condone the delay. In ***University of Delhi Vs Union of India and others reported in 2019 SCC online 2634***, had held that the Court should be liberal in condonation of delay. The lower Appellate Court had held that the petitioner has not satisfactorily explained the delay of 1093 days. The facts narrated above would show that a large part of the delay is due to the delay on the part of the Court in rectifying the errors that had crept in the decree. The appellate Court has not adverted to this vital aspect.”

9. From the perusal of the records, the reason assigned by the petitioner is that the petitioner is aged about 69 years and that at that point of time, he was suffering from jaundice. No doubt, he has not submitted any records before the Court below. However, considering the age of the petitioner and also considering the fact that the delay is only 129 days, that too, in filing the



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connected appeal, this Court is inclined to allow the Civil Revision Petition so as to provide the substantial justice.

10. In the result, this Civil Revision Petition stands **allowed** and the Court below is directed to number the appeal, if it is otherwise in order. There shall be no order as to costs.

21.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Subordinate Judge,
Padmanabhapuram.



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C.KUMARAPPAN,J.

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