



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23/01/2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.RC(MD)No.1035 of 2022

and

Cr1.MP(MD)No.13031 of 2022

Selvi : Petitioner/Respondent/Respondent

Vs.

A.Venkatesh : Respondent/Petitioner/Appellant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records in Cr.M.P No.2765 of 2022 in unnumbered CA No. - of 2022 on the file of the Principal District and Sessions Court, Theni, and set aside the order, dated 08/09/2022 and pass such further orders.

For Petitioner : Mr.Pon Senthil Kumaran.S

For Respondent : Mr.S.Palanivelayutham

O R D E R

This criminal revision has been preferred in order to set aside the impugned order passed by the trial court.

2.The facts in brief:-

The petitioner as complaint filed DVMC No.1 of 2018 before the Judicial Magistrate, Andipatti and during the



trial process, the respondent remained ex-parte. So an ex-parte order was passed allowing the petition and directing the respondent to pay a sum of Rs.5,00,000/-. Against which, the respondent filed criminal appeal before the Principal District Judge, Theni. Along with appeal, he filed a petition under section 5 of the Limitation Act to condone the delay of 6 days in preferring the appeal. That was allowed by the appellate court, observing that duration of the delay is very short.

3.Now the grievance of the petitioner is that the delay has not been properly calculated and there is a delay of 3 years in preferring the appeal. For that purpose, he would rely upon the affidavit that was filed by the respondent before the trial court, on 24/04/2019 to set aside the ex-parte order, that was passed by the trial court, on 31/08/2018. But suppressing the affidavit, that was filed before the trial court, the respondent filed an affidavit before the appellate court stating that he has filed appeal within 9 days from the date of the knowledge of the ex-parte order. What happened to the petition, that was filed by the respondent before the trial court to set aside the ex-parte order is not clear on record.



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4.Now whatever it may be, the delay has not been properly calculated and there is suppression of fact also.

5.The learned counsel appearing for the petitioner would submit that huge arrears amount is also there, which was not paid by the respondent. So there is absolutely suppression of fact by the respondent before the appellate court. So the matter is liable to be remitted back to the appellate court to consider the same on its own merit by taking into account the affidavit, that was filed by the respondent before the trial court, on 24/04/2019 and pass necessary orders. The final order shall be passed within a month from the date of receipt of a copy of this order.

6.With the above said observation, this criminal revision is **allowed** and the impugned order that was passed by the appellate court is set aside and the matter is remitted back to the appellate court to consider the matter afresh in accordance with law. Consequently, connected Miscellaneous Petition is closed.

23/01/2023

Index:Yes/No
Internet:Yes/No
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To,

The Principal District and Sessions Court,



Theni.

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G. ILANGOVAN, J

er

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