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C.R.P(NPD)(MD).No.1927 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.03.2023

Pronounced on : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.1927 of 2018

1.V.Muruganantham

2.M.Atheeshwari

... Revision Petitioners

Vs.

O.Chokkanathan

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records of the lower Court and allow this Revision Petition and set aside the fair and decreetal order dated 04.04.2018 passed in I.A.No.258 of 2013 in UFA.S.C.F.R.No.4983 of 2010 on the file of the Subordinate Judge, Sivagangai.

For Petitioners : Mr.V.Ramakrishnan

For Respondent : Mr.V.Chandrasekar



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ORDER

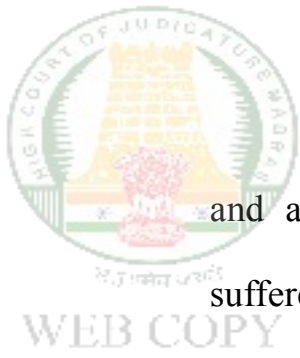
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This Civil Revision Petition is filed against the order dated 04.04.2018 passed in I.A.No.258 of 2013 in UFA S.C.F.R.No.4983 of 2010 on the file of the Subordinate Court, Sivagangai.

2. The revision petitioners are the petitioners/appellants in I.A.No. 258 of 2013 in UFA S.C.F.R.No.4983 of 2010 on the file of the Subordinate Court, Sivagangai.

3. The brief facts of the case:

The revision petitioners are the defendants in O.S.No.86 of 2009 on the file of the District Munsif Court, Manamadurai. After the hot contest, judgment and decree were passed in O.S.No.86 of 2009 on 27.03.2010 against the petitioners/defendants by the District Munsif Court, Manamadurai. The petitioners/defendants preferred an appeal before the Subordinate Court, Sivagangai. The said appeal papers were returned for certain defects on 03.06.2010 granting 15 days time for representation. The first petitioner being a rustic villager was under an impression that his counsel would take care of the appeal papers. In the meantime, the first petitioner suffered from chronic digestive problems



and also piles disease and he underwent a surgery. Thereafter, he suffered from jaundice also. Due to his continuous illness he was not in a position to contact his counsel. After recovery from illness, he contacted his counsel, who informed he misplaced the returned appeal papers. After trace out, the petitioners engaged the present counsel and represented the appeal papers with delay of 1166 days. The delay happened beyond control. The delay of 1166 days may be condoned. Hence, the petitioners have filed the petition I.A.No.258 of 2013 in UFA S.C.F.R.No.4983 of 2010 on the file of the Subordinate Court, Sivagangai. The respondent/plaintiff has denied the averments of the petitioners and filed a detailed counter. After hearing both, the First Appellate Court/Subordinate Court, Sivagangai has dismissed the petition in I.A.No.258 of 2013 in UFA S.C.F.R.No.4983 of 2010 on 04.04.2018. Aggrieved by the order of the First Appellate Court, the petitioners moved this Court by way of this Civil Revision Petition.

4. Heard both side and perused the records in this Civil Revision Petition.

5. The learned counsel appearing for the petitioners has submitted that the petitioners have preferred appeal before the Subordinate Court,



Sivagangai challenging the judgment and decree dated 27.03.2010 passed in O.S.No.86 of 2009 on the file of the Additional District Munsif-cum-Judicial Magistrate Court, Manamadurai. The appeal papers were returned for certain defects granting 15 days time for representation. The earlier counsel on record on behalf of the petitioners misplaced the case records and failed to comply with directions. The first petitioner, who is looking after the case, fell in illness and also suffered from piles disease and underwent surgery. The first petitioner was under the impression that his counsel would take care of the appeal. But, on recovery from illness, he contacted his earlier counsel, who stated his default in representation and after sincere efforts the appeal papers were traced out. In this way, there happened 1166 days delay in representation. The petitioners approached the present counsel and represented the appeal papers with delay condone petition. The petitioners examined P.W.1 and marked documentary evidence under Ex.P.1 to Ex.P.9 to prove the ailment of the first petitioner. The first Appellate Court failed to consider the evidence of the petitioners and dismissed the delay condone petition without any reason. The petitioners presented appeal in time before the First Appellate Court and the appeal papers were returned for certain defects. The earlier counsel committed error and because of the error committed by the earlier counsel, the party



could not be punished. The matter is only between the party and the court and the delay in representation happened beyond control and the petitioners have to be given an opportunity to put forth their case in appeal. The counsel further submits that the condonation of delay in preferring appeal is different from a petition for excusing the delay in representation. The delay in representation may be condoned on taking a lenient view. Therefore, the Civil Revision Petition may be allowed. In support of his arguments, the learned counsel for the revision petitioners have placed reliance on the following decisions:

(1) AIR 1978 0 SC 335, wherein it is held in paragraph Nos.9 and 11 as follows:

“9.... Therefore, in our view, there had not been any delay in preferring the objections. The delay, if any, was in complying with the directions of the Registrar to rectify the defects and refilling the objections. The delay, as we have pointed out earlier, is not due to any want of care on the part of the appellant, but due to circumstances beyond his control.

11.In a recent judgment of this Court delivered on August 3, 1977 in Mahant Bikram Dass v. Financial Commissioner, Civil Appeal No.1822 of 1975 delivered on 3-8-1977: (reported in AIR 1977 SC 2221) it is pointed out that the petitioner under S.5 of



the Limitation Act seeking to condone the delay in preferring an appeal is different from a petition for excusing the delay in representation.”

(2) 1978 91 Law Weekly 580, wherein it is held in paragraph No.6

as follows:

“6. I am of the opinion that this contention is sound. S.148, C.P.C. is general in nature, and certainly, that will come into operation only where the court fixes a time, the alteration or extension of which will have the effect of affecting the rights of somebody else. But, when there is no delay of the appeal papers, there is no question of the interest of anybody else being affected and, therefore, a court being called upon to give notice.”

(3) 2007 4 MLJ 635, wherein it is held in paragraph No.10 as

follows:

“10. A similar question came up before a Division Bench of this Court and the Division Bench in its decision reported in Y.Cusbar v. K.Subbarayan (supra) held that the delay in representation of papers happens several times due to the mistake of the advocates or the advocate’s clerk and if there is undue delay in representation of the papers it can be compensated by awarding costs. The relevant portion of the order reads as under;

“This is not a case wherein the appeal



has been filed out of time. This is a case in which the appeal is filed in time. Therefore, it cannot be said that the decree under appeal has assumed finality and the right has been accrued to the respondent. The delay in representation of the papers in the instant case, cannot be put to the account of the party. Several times, it happens due to the mistake on the part of the advocate's clerk or the advocates in presenting the appeal. Therefore, the Court has to take care to see that the justice does not suffer in such cases. If there is any undue delay in representation of the papers it can be compensated by awarding costs. Therefore, we are of the view that when the appeal has been filed in time, but there is inordinate delay in re-presentation of the papers returned for rectification of the defects, by the appellate Court, the delay can be condoned on taking a lenient view by compensating the other side on payment of costs."

6. The learned counsel for the sole respondent vehemently contended that the petitioner has not explained each and every days delay of 1166 days in representing the appeal papers. The petitioners have falsely stated about the illness of the first petitioner. During the period of ailment alleged by the first petitioner, he has actively participated in various proceedings before the Tahsildar, Collector and in writ proceedings before the Hon'ble Madurai Bench of Madras High Court.



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The first petitioner has also attended the registration office for executing certain deeds. The respondent has deposed as R.W.1 and marked exhibits Ex.R.1 to Ex.R.14 to prove the version of the respondent. The exhibits marked on the side of the petitioner would not show that the first petitioner was taking treatment and was bed ridden during the alleged period. The petitioners have only produced Ex.P.9 medical certificate which shows that the first petitioner was under treatment for certain period and other exhibits are only medical prescription and scan report. Moreover, though the first petitioner was stated to be on ailment, the details of physical fitness of the second petitioner has not been elicited by the petitioners. The second petitioner can very well approach the counsel for appeal proceedings. The petitioners were in negligence on their part and filed this petition with enormous delay in order to harass the respondent further in litigation. The citations relied on by the petitioners are not applicable to the facts and circumstances of the case as they are related to the year 1978 and 2007. Thereafter, several decisions rendered by the Hon'ble Supreme Court and Hon'ble High Courts in respect of condonation of delay of huge days in representation of cases. The First appellate Court has considered the rival arguments of both side and correctly dismissed the petition for condoning the delay of 1166 days filed by the petitioner and there is no merit in this Civil Revision



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Petition. Therefore, this Civil Revision Petition may be dismissed.

7. On hearing both side rival arguments and on perusal of records, it is clear that the respondent as plaintiff filed the main suit in O.S.No. 86/2009 on the file of the Additional District Munsif Court, Manamadurai against the petitioners for the relief of permanent injunction restraining the petitioners from interfering with the lease possession of the respondent over the suit property therein. The petitioners as defendants filed a written statement and contested the suit. The Trial Court/Additional District Munsif Court, Manamadurai decreed the suit in O.S.No.86 of 2009 on 27.03.2010. The petitioners/defendants have filed an appeal before the Subordinate Court, Sivagangai on 31.05.2010 challenging the judgment and decree dated 27.03.2010 passed in O.S.No.86 of 2009. The said appeal papers were returned on 03.06.2010 for certain defects granting 15 days time. But, the appeal papers represented before the Subordinate Court, Sivagangai on 13.08.2013 with petition in I.A.No.258/2013 to condone the delay of 1166 days and the said petition was dismissed on 04.04.2018. Hence, this Civil Revision Petition is filed against the dismissal of petition in I.A.No.258 of 2013.

8. The learned counsel appearing for the petitioners has placed



argument that the appeal was preferred in time, but due to error committed by the earlier counsel the delay was happened. Moreover, the error committed by the counsel could not be affected the appeal rights of the party. Further, the matter is only between the party and Court in respect of representing the returned appeal papers. Therefore, lenient view may be taken and the petitioners may be given an opportunity to dispose the appeal on merits by relying on the aforesaid citations.

9. The learned counsel for the respondent submitted that the citations relied on by the petitioners are related to year 1978 and 2007 and there are several changed principle of law settled by the Hon'ble Supreme Court and by this court in respect of delay condone matters. However, the learned counsel for the respondent has not submitted any citation.

10. The petitioners have preferred the appeal in time before the Subordinate Court, Sivagangai, challenging the judgment and decree passed in O.S.No.86 of 2009 on the file of the District Munsif Court, Manamadurai. The respondent has not raised any objection in it. The appeal papers were returned for certain rectification and the same were not represented within the stipulated time. As rightly argued by the learned counsel for the petitioners relied on the citation above, the



petition for condoning the delay in preferring an appeal is different from a petition for excusing the delay in representation. When an appeal is filed in time, it cannot be said that the judgment and decree under appeal have assumed finality. When an appeal papers filed before the Court and the same were returned, it is the matter between the Court and the advocate concerned. Because of the delay in representation of appeal by the advocate or his clerk, the litigant should not be suffered. In this case, the petitioners stated that the first petitioner is attending the case and he is rustic villager and was under impression that his counsel would take care of the appeal. Further, it is stated that he fell in illness and also suffered from piles disease and underwent surgery. The petitioners have produced medical bills and medical certificate for some period. The reason assigned by the petitioners' side cannot be brushed aside. It is a settled law that because of mistake or error in following the case of the litigant by the advocate, the right of appeal of the litigant cannot be deprived and that each and every chance has to be given to the party to put forth his/her case before Appellate Forum. The appeal was presented in time, which is also not objected by respondent, but there is undue delay in representation of papers by the previous counsel for the petitioners. Such undue delay in representation of the appeal papers returned for rectification of defects, by the Appellate Court, can be



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considered by taking lenient view, however, the opposite party is to be compensated on payment of costs, as rightly held by this Court in **2007 4 MLJ 635** relied on by the counsel for the petitioners. Therefore, considering the above facts and circumstances, this Court is inclined to allow this Civil Revision Petition on payment of cost.

11. In the result, this Civil Revision Petition is allowed on condition that the petitioners shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent on or before 18.07.2023, failing which this Civil Revision Petition stands dismissed automatically without any further reference to this Court.

.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd

To

1. The Subordinate Judge,
Sivagangai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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