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CRP. No.96 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2024

PRONOUNCED ON : 06.08.2024

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THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. (NPD) No.96 of 2022

&

CMP No.545 of 2022

Ragounadin

... Petitioner/appellant

Vs.

1.R.Ramakrishnan

2.Paneerselvam

..... respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 24.09.2021 passed in I.A.No.386 of 2020 in A.S.No.326 of 2006 on the file of the Principal District Judge, Puducherry.

For Petitioner : Mr.T.S.Baskaran

For Respondents : Mr.S.Subramanian for R1

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 24.09.2021 passed in I.A.No.386 of 2020 in A.S.No.326 of 2006 on the file of the Principal District Judge, Puducherry,



CRP. No.96 of 2022

in and by which, an application filed under Section 5 of the Limitation Act, to condone the delay of 174 days in filing the application to restore the Appeal, came to the dismissed.

2.The brief facts which led to the filing of the present Civil Revision Petition, are as follows:

The petitioner herein is the son of the second defendant in the original suit in O.S No.203 of 1995 filed by the first respondent/plaintiff for recovery of money. The said suit, after contest, decreed by the trial Court vide judgment dated 23.09.1996. As against the said judgment and decree dated 23.09.1996, the second defendant preferred an Appeal in A.S.No.326 of 2006. The said Appeal came to be dismissed for non-prosecution on 30.04.2019. It appears that after dismissal of the Appeal for non-prosecution, the plaintiff has moved execution petition for recover of the decreetal amount and he also filed E.A.No.114 of 2018 and got the attachment of the property belonged to the deceased appellant.

3.According to the petitioner, after coming to know the attachment of the property, he came to know about the filing of the original suit and also



dismissal of the Appeal for non-prosecution and consequently, execution proceedings. Therefore, the petitioner moved an application, seeking for restoration of the Appeal, which was dismissed for non-prosecution on 30.04.2019 and since there was a delay of 174 days, the petitioner moved an application in IA.No.386 of 2020, seeking to condone the said delay. The said application was resisted by the second respondent /plaintiff herein stating that even though sufficient opportunities were given to the petitioner's mother/second defendant for appearance, she failed to utilize the same and to contest the Appeal, accordingly, the Court below dismissed the Appeal for non-prosecution on 19.11.2015. By the order dated 24.09.2021, the Court below dismissed the application holding that the intention of the petitioner is only to drag on the proceedings and there is no merit in the application. Aggrieved by the said order, the petitioner has constrained to file the present Civil Revision Petition.

5.Questioning the order of the Courts below, Mr.T.S.Bhaskaran, leaned counsel for the petitioner would submit that the Court below has not dealt with the matter in proper perspective despite sufficient reasons assigned by the petitioner to condone the delay. He would also submit that



the suit itself was filed by the plaintiff in collision with the first defendant and obtained the decree and there are merits in the Appeal and opportunity ought to have been given by the Court below to the petitioner to contest the same since the plaintiff/ second respondent having obtained the collusive decree, got the attachment of the properties and his rights will be adversely affected. He would also submit that the Court below ought to have adopted a liberal approach and ought to have allowed the application but miserably dismissed the same. He would also submit that the Court below erroneously came to the conclusion that filing of the application to restore the Appeal is nothing but second round of litigation without giving an opportunity to the petitioner.

6. The learned counsel for the first respondent would submit that the suit is for recovery of money filed in the year 1995, was decreed on 23.09.1996. The execution proceedings filed before the Principal Sub Judge, Pondicherry for attachment, wherein, attachment order was also passed on 01.08.2018 and 19.12.2018. The petitioner filed EA.No.30 of 2019 to raise the attachment and the same was dismissed on 24.10.2019 and thereafter he filed the present application with an after-thought. The learned counsel



further submits that filing the petition to condone the delay is only an abuse of process of law and there is no sufficient cause shown by him to condone the delay of 174 days in filing the restoration petition and sought to dismiss the petition.

7.Having heard the respective counsels and on careful perusal of the records, it appears that the first respondent filed a suit in O.S.No.203 of 1995 for recovery of money and the same was decreed on 23.09.1996. Aggrieved by the same, the second defendant in the suit i.e., the mother of the petitioner herein filed an Appeal in AS.No.326 of 2006 before the Appellate Court and the same was dismissed on 30.04.2019 for default. The petitioner is the son of judgment debtor filed E.A.No.30 of 2019 on 24.01.2019 seeking to raise the attachment order in E.A.No.114 of 2018. The said EA.No.30 of 2019 came to be dismissed on 24.10.2019. After dismissal of E.A.No.30 of 2019, the present application is filed by the petitioner under Section 5 of the Limitation Act on 20.11.2019 seeking to condone the delay of 174 days in filing an application to restore the Appeal, which was dismissed for default on 30.04.2019. It appears that on the date of filing of EA No.30 of 2019 i.e, on 24.01.2019, the petitioner is well aware



about the suit proceedings. But he did not take any steps to restore the Appeal, which was dismissed for default on 30.04.2019. Only after the dismissal of EA.No.30 of 2019, he filed the present application on 20.11.2019 with a delay of 174 days. The reason stated by the petitioner for the delay is that his earlier counsel did not make a proper follow up of the Appeal appears to be not convincing.

8.It is also an admitted fact that his mother died on 01.10.2017, during the pendency of Appeal. It is the contention of the petitioner that he came to know about the Court proceedings only after service of attachment notice. As and when the petitioner filed EA.No.30 of 2019 on 24.01.2019 to raise the attachment order, it is clear that by that time he is aware about the suit and the Appeal. He could have filed an application to restore the Appeal, which was dismissed for non-prosecution on 30.04.2019, at the time of filing of EA.No.30 of 2019. He filed a restoration petition only after the dismissal of E.A.No.30 of 2019. As such, the delay of 174 days had occurred. On careful consideration of the averments made in the affidavit filed along with IA.No.386 of 2020 and the arguments of the learned counsel for the petitioner, this Court is of the considered view that the



CRP. No.96 of 2022

petitioner failed to show any sufficient cause to condone the delay of 174 days in order to entertain the restoration petition.

9.The learned Principal District Judge, Puducherry has rightly dismissed I.A.No.386 of 2020, which was filed to condone the delay of 174 days in filing any application to restore the Appeal. In the considered opinion of this Court, there is no infirmity or illegality in the order passed by the Appellate Court and no interference is required in the present Civil Revision Petition.

10.Accordingly, this Civil Revision Petition is dismissed.

No costs.

Consequently, connected miscellaneous petition is closed.

06.08.2024

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Index : Yes / No

Internet : Yes / No

To

The Principal District Judge, Puducherry



WEB COPY



CRP. No.96 of 2022

BATTU DEVANAND.J.,

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C.R.P. (PD)No.96 of 2022

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