



CRP No.1640 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1640 of 2020

1. Saravanan @ Suthakar (Deceased)
 2. Santhi
- ... Petitioner

(Sole petitioner died. Petitioner – 2 is brought on record as legal heirs of the deceased sole petitioner viz., Saravanan @ Suthakar vide Court order dated 18.10.2024 made in C.M.P.No.11388 of 2024 in C.R.P.No.1640 of 2020 by ADJCJ)

-VS-

Kandasamy

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of CPC, praying to set aside the order dated 23.01.2019 made in I.A.No.62 of 2018 in A.S.SR.No.702 of 2018.

For Petitioner 2 : Mr.J.Arulprakasam



WEB COPY



CRP No.1640 of 2020

For Respondent : No representation

ORDER

This Civil Revision Petition is filed to set aside the order dated 23.01.2019 made in I.A.No.62 of 2018 in A.S.SR.No.702 of 2018 by the Sub Court, Ariyalur, dismissing the petition to condone the delay of 788 days in filing the appeal.

2. The petitioner is the plaintiff in O.S.No.273 of 2012 filed against the respondent seeking for a declaration and permanent injunction in respect of the suit scheduled property. In the trial Court, the respondent side remained *ex parte*. The trial Court and after the evidence of the petitioner, holding that the petitioner / plaintiff has not proved his case, dismissed the suit by Judgment and Decree dated 22.04.2016. Against the said judgment, the petitioner has filed an appeal in A.S.SR.No.702 of 2018 with the delay of 788 days. The petitioner has contended that since he was suffering from nervous problem, he was unable to file an appeal within time. However, the appellate Court, finding that the petitioner has not shown sufficient cause, dismissed the application seeking to condone the delay of 788 days.



Against the same, the present civil revision petition has been filed.

WEB COPY

3. Learned counsel for the petitioner would submit that the petitioner is the plaintiff in O.S.No.273 of 2012. The petitioner conducted trial and the suit was dismissed by the trial Court finding that the petitioner has not proved his case. Since the petitioner was suffering from nervous problem., he was unable to file an appeal within time and thereby there is a delay of 788 days in filing the appeal. He further submitted that the petitioner later died due to his illness of nervous problem and the petitioner's wife, who is the legal heir of the petitioner, has been brought on record. The petitioner is a widow, she is unable to produce the medical certificate of her husband. However, the petitioner is ready and willing to compensate the respondent for the inconvenience caused to him by the delay and that the petitioner also undertakes to cooperate with the lower Appellate Court for speedy disposal of the appeal and thereby, seeks to set aside the order.

4. There is no representation for the respondent.

5. It is the case of the petitioner that since he was suffering from nervous problem, he was unable to file an appeal within time. Hence, there



CRP No.1640 of 2020

was a delay of 788 days in filing the appeal. The lower Appellate Court finding that the petitioner has not filed any proof to show that he was affected by nervous problem and thereby holding that he had not shown sufficient cause, dismissed the application. Now it is reported by learned counsel for the petitioner that the petitioner later died due to his nervous problem and that he is being represented by his wife who is the sole legal heir.

6. Considering the above facts and circumstances, this Court is of the opinion that an opportunity be given to the petitioner to pursue the appeal on imposition of cost and terms. Accordingly, the order dated 23.01.2019 in I.A.No.62 of 2018 in A.S.SR.No.702 of 2018 is set aside on condition, that the petitioner shall deposit a sum of Rs.2,000/- (Rupees Two Thousand only) within *two weeks* from the date of receipt of a copy of this order before the Lower Appellate Court to the credit of A.S.SR.No.702 of 2018. On such deposit being made, the appeal shall be numbered and notice will be issued to the respondent. The petitioner shall ensure that she will cooperate for speedy disposal of the appeal.

7. Accordingly, this Civil Revision Petition is allowed on the above



CRP No.1640 of 2020

terms. No costs.

WEB COPY

24.10.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

rna

To

The Sub Court, Ariyalur.



WEB COPY



CRP No.1640 of 2020

A.D.JAGADISH CHANDIRA, J.

rna

C.R.P No.1640 of 2020

24.10.2024