



C.R.P.NPD.No.2947 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.NPD.No.2947 of 2024

V.Joshep

... Petitioner

Vs

V.Amalraj

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the Fair and Decretal Order made in I.A.No.1 of 2021 in A.S.Sr.No.4619 of 2021 on the file of the Subordinate Judge at Perambalur dated 30.04.2024.

For Petitioner : Mrs.R.Thenmozhi
For Respondent : Mr.G.Elamurugan

ORDER

This Civil Revision Petition is filed seeking to set aside the fair and decretal order, dated 30.04.2024 in I.A.No.01 of 2022 in I.A.No.1 of 2021



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in A.S.Sr.No.4619 of 2021 on the file of the Subordinate Court,
Perambalur.

2. The petitioner is the plaintiff in O.S.No.201 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Veppathattai. The suit came to be dismissed on 05.03.2020. There was a delay of 10 days in filing the copy application. The judgment and decree was delivered on 01.10.2020. It is the case of the petitioner that due to Covid-19 restrictions and personal illness, he could not file the appeal in time and thereby there had been a delay of 342 days in filing the appeal.

3. The respondent had filed a counter, contending that the petitioner/plaintiff, after dismissal of the suit, had cleverly approached the appellate Court and sought for return of the documents stating that he would not file any appeal, in order to defeat the rights of the respondent/defendant. Thereafter, based on the documents returned by the Court, the petitioner/plaintiff had executed a registered settlement deed in



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favour of his wife, Karmel Mary on 06.09.2021 before the Sub Registrar, Veppanthattai and the same was registered as Document No.2631 of 2021. He further submitted that no other materials had been filed before the concerned Court to prove that he had suffered illness. The appellate Court, finding that the petitioner/plaintiff had not shown any sufficient cause and that the petitioner had executed a settlement deed on 06.09.2021 during the relevant period in favour of his wife, had dismissed the petition, against which, the revision has been filed by the plaintiff.

4. The learned counsel for the petitioner submitted that, as per the order passed in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition No.3 of 2020, the Hon'ble Supreme Court, by order dated 10.01.2022, held that the period from 15.03.2020 till 28.02.2022 shall be excluded for the purpose of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings and that the remaining period has to be calculated for the purpose of filing any appeal. In this case, if the period



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from 15.03.2020 till 28.02.2022 is excluded, it is clear that the appeal has been filed within time. However, the appellate Court has gone into merits of the case and had erroneously dismissed the petition on 30.04.2024 and thereby, he seeks to set aside the said order.

5. Per contra, the learned counsel for the respondent/defendant would submit that the suit came to be dismissed on 05.03.2020 and the appeal ought to have been filed within 30 days, whereas the petitioner had not filed the appeal within 30 days. The petitioner had approached the trial Court and by contending that he would not file any appeal and had taken return of the original documents that were produced during the trial and subsequently on 06.09.2021, he had executed a settlement deed in favour of his wife. He would further submit that the appellate Court held that the petitioner/plaintiff has not filed any proof to show that he was prevented from filing any appeal in time and further finding that during the relevant period, he had executed a settlement deed, dated 06.09.2021 in favour of his wife by taking return of the document, and thereby had attempted to defeat



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the rights of the respondent/defendant and also to create further encumbrances, had rightly dismissed the petition. In support of his contentions, the learned counsel for the respondent/defendant relied on the judgment of the Hon'ble Supreme Court reported in **(2010) 14 SCC 38 [Ramjas Foundation and another Vs. Union of India and Others]**. He would further submit that the petitioner has come to Court with unclean hands and thereby, he would seek to dismiss the revision petition.

6. Heard the learned counsels on both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the petitioner/plaintiff has not properly explained the delay in respect of the period between 15.03.2021 and 16.12.2021. He has also not produced any acceptable document like medical records before the Court below, to prove his illness. The petitioner/plaintiff had approached the Court and sought for return of the original documents, stating that he had no intention to file any appeal,



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whereas after receiving the documents from the Court below, he had executed a settlement in favour of his wife. This conduct of the petitioner/plaintiff is highly reprehensible. Moreover, as rightly contended by the learned counsel for the respondent/defendant, the petitioner/plaintiff, while taking return of the original document from the trial Court, had made an endorsement that he is not preferring any appeal and thereby he had also relinquished his right to file an appeal. The Court below rightly held that the petitioner/plaintiff has not shown any sufficient cause to condone the delay in filing the appeal.

8. In view of the above, this Court does not find any illegality or infirmity in the order passed by the learned Subordinate Judge, Perambalur. Accordingly, the Civil Revision Petition stands dismissed.

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Index : Yes/No
Speaking order/non-speaking order
srn

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A.D.JAGADISH CHANDIRA, J.,

srn

To

1. The Subordinate Judge at Perambalur
2. The Section Officer,
V.R.Section,
High Court, Madras.

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