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CRP.Nos.115 & 398 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.Nos.115 & 398 of 2021

and

CMP.No.3419 of 2021

Elavarasi

... Petitioner in both CRPs

Vs.

1.Deputy Superintendent of Police
Office of Deputy Superintendent of Police
Sethiyathope.

2.Superintendent of Police
Office of Superintendent of Police
Cuddalore.

3.The State of Tamil Nadu, Rep.by Collector
Collectorate
Cuddalore District.

...Respondents in both CRPs

Prayer in CRP.No.115 of 2021 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the Additional District and Sessions Judge, Chidambaram, in IA.No.86 of 2018



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in IA.No.89 of 2013 in un-numbered appeal suit, subsequently numbered as A.S.No.88 of 2019 by its order dated 01.12.2018.

Prayer in CRP.No.398 of 2021 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the Subordinate Judge, Chidambaram, in IA.No.89 of 2013 in un-numbered appeal suit, subsequent, numbered as A.S.No.88 of 2019 by its order dated 04.12.2019 condoning the delay of 1699 days delay in filing the appeal against the judgment and decree passed in OS.No.237 of 2004 by Principal District Munsif Court, Chidambaram, by its order dated 23.06.2008.

For Petitioner in
both CRPs. : Mr.S.Sundaresan

For Respondents
in CRPs. : Mr.V.Jeeva Giridharan for R1 to R3
Additional Government Pleader

COMMON ORDER

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This Civil Revision Petition is filed challenging the order passed by the Court below allowing the application to amend the petition filed by the respondents to condone the delay in filing as 59 days instead of 1699 days on payment of costs of Rs.300/-.



2. The petitioner herein filed a suit for declaration and injunction

in respect of the right of access through 'B' Schedule property to suit 'A' Schedule property and she also sought for decree of mandatory injunction seeking removal of superstructure put up by the respondents in the suit 'B' Schedule property. The said suit was decreed in respect of mandatory injunction. Aggrieved by the same, the respondents preferred an appeal with delay. Initially the respondents filed a petition to condone delay of 1699 days in filing the first appeal in IA.No.89 of 2013. Subsequently, the instant application has been filed in IA.No.86 of 2018 seeking to amend the prayer in the condone delay petition so as to mention the days of delay as 59 days instead of 1699 days. The said application was allowed by the Court below. Aggrieved by the same, the petitioner is before this Court.

3. In the affidavit filed in support of this petition for amendment, it is averred by the petitioner that earlier condone delay petition was filed on the impression that there was a delay of 1699 days in filing the appeal. But later on verification of Court's record, it was found that the delay was only 59 days. It was specifically averred by the petitioner that the appeal was found to



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have been filed on 28.10.2008 as per entry in 19-Register. The said application was opposed by the petitioner herein on the ground that the delay in filing appeal was 1699 days. It was the case of the petitioner that the respondents also examined one witness as PW1 admitting the original averment in the petition, as if, the delay was 1699 days. Hence, at the later stage it is not open to the respondents to seek amendment as if the delay is only 59 days.

4. The said amendment application has been allowed by the Court below accepting the contention of the respondents that delay in filing was only 59 days. In the said order, there is no discussion by the Court below, when the appeal was filed by the respondents originally. The original 19-Register was called for from the Lower Court. A perusal of the same would suggest that there is an entry on 28.10.2008 with Sl.No.8923 as if, an appeal was filed by one K.M.B with three enclosures and Court fee of Rs.20. The original memorandum of appeal papers is also sent along with records by the Court below. A perusal of the same would suggest that there is no Court seal bearing 28.10.2008 on the memorandum of appeal. However, along with the



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memorandum of appeal, memo of appearance signed by the Additional Government Pleader S.Venkatesan bearing Court seal dated 28.10.2008 is available. However, there is no Court seal dated 28.10.2008 in the memorandum of appeal. In such circumstances, it is not clear how the Court below came to the conclusion that the appeal was filed as early as 2008. Even assuming that the appeal papers were said to have been filed on 28.10.2008 there is no discussion in the impugned order whether the appeal papers were returned and represented, what was the date of return and what was the date of representation etc.

5. In such circumstances, the Court below ought not to have allowed the amendment application without getting convinced that the appeal papers were originally presented on 28.10.2008 and the delay is only 59 days in filing. The judgment and decree impugned in the original suit was dated 23.06.2008. There is no discussion in the impugned order what was the date of filing copy application for getting certified copy and what was the date of on which the certified copy were made ready etc., to find out the exact date of delay. Therefore, the order allowing the amendment application was passed



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without giving convincing reason about the date of presentation of the appeal and the exact number of days of delay. Accordingly, the impugned order is set aside and the matter is remitted back to the file of the Court below for considering the question in detail having in mind the points mentioned above.

6. Accordingly, this Civil Revision Petition in CRP.No.115 of 2021 is allowed by setting aside the order impugned and the matter is remitted back to the file of the Subordinate Court, Chidambaram for consideration afresh. It is made clear unless the Court is satisfied that the delay in filing is only 59 days the amendment sought for by the respondents shall not be allowed.

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7. This Civil Revision Petition in CRP.No.398 of 2021 is filed challenging the order allowing IA.No.89 of 2013, filed to condone the delay of 59 days in filing the appeal in the above mentioned case.



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8. This application was taken up for hearing, after allowing the

amendment application against which the Civil Revision Petition in CRP.No.115 of 2021 was filed. The Court below was pleased to condone the delay of 59 days on the ground that on verification of 19 Register it was found that the contention raised by the petitioner as if the appeal was presented in the year 2008 was found to be proved. However, as mentioned earlier, the appeal memorandum does not contain the Court seal dated 28.10.2008. The CR register 19 dated 28.10.2008 contains only entry regarding the appeal filed by one K.M.B and as per the appeal memorandum, the appeal was filed by one S.Venkatesh, learned Additional Government Pleader, Chidambaram. The appeal memorandum also does not contain the Court seal dated 28.10.2008.

9. In such circumstances, the order impugned in this Revision condoning the delay of 59 days is liable to be set aside when there is a doubt with regard to the length of delay and date of presentation of the appeal.



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10. Therefore, both the matters are remitted back to the file of the trial Court with a direction to dispose of the IA.Nos. 86/2018 & 89/2013 on merits and in accordance with law, in the light of the defects pointed earlier.

11. With the above observations, these Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed

05.02.2024

Index : Yes / No
Internet : Yes / No
dna

To

- 1.The Additional District and Sessions Court, Chidambaram.
- 2.The Sub-ordinate Court, Chidambaram.
- 3.The Principal District Munsif Court, Chidambaram.
- 4.The Deputy Superintendent of Police
Office of Deputy Superintendent of Police
Sethiyathope.

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5.The Superintendent of Police
Office of Superintendent of Police
Cuddalore.

6.The State of Tamil Nadu, Rep.by Collector
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S.SOUNTHAR, J.

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