



THE HIGH COURT OF JUD ICATURE AT MADRAS

DATED: 09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2590 of 2021

Jothi

...Petitioner

Vs.

1.Selvi

2.Sivakumar

...Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, against the dismissal of condone delay petition in I.A.No.43 of 2017 in A.S.No.24 of 2011 (Sub-Court, Dharmapuri) dated 14.08.2021 passed by the learned Sub-ordinate Judge, Palacode.

For Petitioner : Mr.R.Sundarapandiyan

For Respondents : Mr.Arun Anbumani

ORDER

Challenging an order of dismissal of an application, seeking condonation of delay of 758 days in seeking restoration of the appeal, this revision has been preferred.

2.The appeal was originally pending before the Sub-Court, Dharmapuri. The appellant argued the appeal on 15.06.2012 thereafter, the appeal was adjourned for 28 times for hearing the respondent. On



22.04.2013, the appeal was adjourned on the ground that Section 5 application filed by the respondents seeking condonation of delay in filing cross-objection was pending. Thereafter, the appeal got transferred to the Sub-Court, Palacode on its constitution and again, the appeal was adjourned for several times and eventually, it was dismissed on 13.07.2015 for non-prosecution. Contending that the petitioner / appellant was unwell and therefore, he was unable to make arrangements for appearance of his counsel in the present Court namely, the Sub-Court, Palacode, the petitioner sought for condonation of delay. The said application has been dismissed on the ground that the reasons assigned are not sufficient for condonation of delay of 758 days.

3.A perusal of the record shows that the appeal was unnecessarily adjourned 28 times after the appellant had argued the matter between 15.06.2012 and 22.04.2013. Again, after the case was transferred to the Sub-Court, Palacode, it was adjourned for 15 times for the argument of the appellant. No doubt, there is some negligence on the part of the appellant, but capital punishment cannot be imposed for his negligence where the Court can also be equally blamed for adjourning the matter for 28 times for the arguments of the respondent. The respondent has no vested right in



perpetuating the illegality namely, dismissal of an appeal for default.

4. The reason given is that the petitioner was suffering from jaundice and the learned Sub-ordinate Judge has faulted the appellant for not producing medical records. It is common knowledge that generally, people do not seek Allopathy medicine for jaundice. It is only the country medicine/ conventional medicine that is available for jaundice. The claim of the petitioner that he had suffered jaundice for 758 days is also unbelievable.

5. However, taking a lenient view in order to give a chance to the petitioner to argue the appeal on merits, this Civil Revision Petition is **allowed**, the order of the Trial Court is set aside. Exercising power under Article 227 and the appeal is restored to file. The learned Appellate Judge is directed to hear the appeal and dispose of the same within a period of three months from the date of receipt of a copy of this order. The petitioner shall co-operate with the Court for disposal. No costs.

09.01.2024

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Neutral Citation : No

R.SUBRAMANIAN, J.



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The Sub-Court,
Palacode.

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