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C.R.P.No.1953 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.06.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(NPD).No.1953 of 2017

1.Mrs.P.Bhavani

2.Mr.P.Subramani

... Petitioners

Versus

1.Mrs.Sudha

2.BSNL

Rep. By its Deputy General Manager (Admin)

Welfare Section,

No.89, Millers Road,

Chennai-600 010

3.The Divisional Engineer

BSNL, Chennai Telephones,

Ambattur Telephone Exchange,

M.T.H.Road, Chennai-600 098.

...Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 11.01.2017 made in C.M.P.No.545 of 2016 in A.S.Sr.No.19029 of 2016 in O.S.No.245 of 2011 passed by the learned Principal City Civil Judge, Chennai.



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For Petitioner	:Mr.G.Ilangovan
For Respondents	:R1- Notice sent-service awaited R2-served Mr.M.P.Mohandoss-R3

ORDER

This Civil Revision Petition has been filed against the order dated 11.01.2017 in C.M.P.No.545 of 2016 in A.S.Sr.No.19029 of 2016 on the file of the Principal City Civil Judge, Chennai.

2. The petitioners are plaintiffs in a suit in O.S.No.245 of 2011 filed against the respondents herein for the relief of declaration that the plaintiffs are the only legal heirs being wife and son of the deceased N.Parasuraman and for permanent injunction restraining the defendants 2 and 3 and their officials, administrators or legal representatives from in any manner disbursing any amount towards the benefits or any other sums payable on account of the death of the deceased N.Parasuraman to the 1st defendant and for costs. The Trial Court, after hearing both sides partly decreed the suit declaring that the 2nd plaintiff is the son of the 1st plaintiff and deceased N.Parasuraman and for



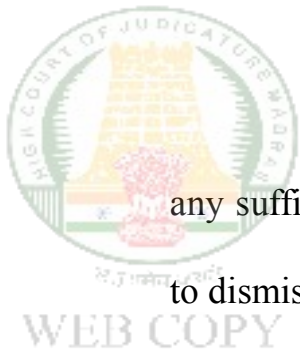
permanent injunction. Aggrieved by the same, the petitioners have preferred an appeal in A.S.Sr.No.19029 of 2016 before the City Civil Court, Chennai along with a petition to condone the delay of 1143 days in preferring appeal. The First Appellate Court, by order dated 11.01.2017, dismissed the petition in C.M.P.No.545 of 2016 holding that sufficient cause was not shown to condone the enormous delay of 1143 days by the petitioners. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioners submits that the lower Appellate Court has failed to consider the reasons assigned by the petitioners for the delay that the 1st petitioner is the widow and they have no source of income and they had been struggling for their livelihood and further, the 1st petitioner was bedridden continuously for more than 2 ½ years due to severe Arthritis and Uterus problems and that she could not take steps to file appeal in time due to poverty and bad health condition. The learned counsel further contended that the lower Appellate Court ought to have rejected the contentions of the 2nd respondent that they had released 50 per cent of terminal benefits and 50 per cent of family pension to the 2nd petitioner and that filing of



I.A.No.9394 of 2014 for return of documents on the ground that no appeal has been preferred and the appeal period was also over. The learned counsel further submits that 2nd respondent no way aggrieved by the delay caused in preferring first appeal where the 2nd respondent is the employer, who shall disburse the terminal benefits of the deceased to the legal representatives as per the direction of the Court and therefore, the lower Appellate Court ought not to have given any weightage to the contentions raised by the 2nd respondent.

4. On the other hand, the learned counsel for the respondents 2 and 3 submitted that suit was decreed on 10.12.2012 and thereafter, the competent authority has released 50 per cent of terminal benefits and 50 per cent of pension to the 2nd petitioner, son of the 1st petitioner and the deceased N.Parasuraman till he attains majority in compliance with the decree and judgment. Thereafter, the petitioners have filed a petition in I.A.No.9394 of 2014 before the Trial Court for return of documents. In the affidavit filed along with the said petition, it is stated that no appeal has been preferred against the judgment and decree by any of the parties to the suit. The learned counsel for the 2nd and 3rd respondents further contended that the petitioners failed to show



any sufficient cause to condone the delay of 1143 days and as such, he sought to dismiss the revision petition.

5. Heard the submissions of learned counsels on either side and upon careful perusal of the materials available on record, it is an admitted fact that the suit was partly decreed on 10.12.2012 and the petitioners preferred an appeal before the First Appellate Court only on 14.04.2016. It is also an admitted fact that in the month of April 2014, the petitioners filed a petition in I.A.No.9394 of 2014 in O.S.No.245 of 2011 before the Trial Court for return of the documents. If really the petitioners intend to prefer an appeal, if they aggrieved by the decree and judgment dated 10.12.2012, they can file appeal within a period of limitation prescribed for filing appeal. It is an undisputed fact that there is a delay of 1143 days in preferring the appeal. In our considered opinion, it is an inordinate delay. The petitioners failed to show any sufficient cause to condone such an inordinate delay. The Hon'ble Apex Court, time and again held that day to day delay has to be explained to condone the delay. It is also held by the Hon'ble Apex Court that the petitioner seeking condonation of delay has to satisfy the Court by showing sufficient cause to



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condone the delay. In the present case, these two aspects are missing. As such, in our considered opinion, there is no illegality or irregularity in the order passed by the First Appellate Court in dismissing C.M.P.No.545 of 2016. Accordingly, this Civil Revision Petition stands dismissed. No costs.

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Index:Yes/No.
Internet:Yes/No.
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To
The Principal City Civil Judge, Chennai.



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BATTU DEVANAND.J.,

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