



C.R.P.(NPD).No.3656 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.3656 of 2018
and
C.M.P.No.20360 of 2018

P.EKAMBARAM

... Petitioner

VS

RAVI SELVAM

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow the Revision Petition and set aside the order and decretal order dated 27.08.2018 passed in I.A.No.332 of 2017 in I.A.No.114 of 2013 in A.S.No.17 of 2010 by the Subordinate Judge, Kanchipuram.

For Petitioner : Mr.Manisekaran V.

For Respondent : Mr.J.Ashok
for M/s.P.D.Selvaraj

ORDER



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The Civil Revision Petition is filed challenging the order passed by the First Appellate Court allowing the application filed by the respondent seeking to condone the delay of 1265 days in filing the petition to restore I.A.No.124 of 2013, which was dismissed for default on 06.01.2014.

2. The petitioner herein obtained a money decree against the respondent in O.S.No.452 of 2006 on the file of the learned District Munsif, Kanchipuram. Aggrieved by the same, the respondent herein preferred an appeal in A.S.No.17 of 2010 on the file of the Subordinate Court, Kanchipuram. In the said appeal, the petitioner filed his written arguments as early as 26.04.2011. The respondent failed to advance his argument for very long time. Ultimately, owing to non-appearance of respondent, the appeal was dismissed for default on 05.11.2012. Thereafter, the respondent herein filed an application to restore the appeal along with petition to condone the delay of 44 days in I.A.No.124 of 2013. The said application was dismissed for default on 06.01.2014. Thereafter, instead of restoring I.A.No.124 of 2013, the respondent filed another application in I.A.No.553 of 2016 seeking to condone the delay in filing petition to restore the appeal. When the application



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came up for hearing, it was pointed out that earlier application to condone the delay was dismissed for default and suppressing the same, second application has been filed by the respondent. Thereafter, the respondent not pressed the second application and filed an application to restore I.A.No.124 of 2013, which was dismissed for default. Along with the said restoration application, the respondent filed instant application in I.A.No.332 of 2017 seeking to condone the delay of 1265 days in filing an application to restore I.A.No.124 of 2013.

3. In the affidavit filed in support of the condone delay petition, it was stated by the respondent that he engaged one R.Doss, Advocate to conduct his case and he met with a road accident and suffered grievous injuries. Therefore, he could not follow the case and hence, the appeal was dismissed for default on 05.11.2012. It was further stated by the respondent that thereafter, he had engaged one S.Arun, Advocate to follow his case and he mistakenly filed second application in I.A.No.553 of 2016 to condone the delay of 44 days in filing the appeal instead of restoring earlier application, which was dismissed for default.



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4. Since the same was pointed out by the petitioner at the time of argument, the respondent was constrained to file the present application to restore the earlier condone delay petition, which was dismissed for default along with condone delay petition in filing the restoration application.

5. The Trial Court allowed the condone delay petition mainly on the ground that the delay had occurred due to injury to the counsel on record for respondent namely one R.Doss, in a road accident. It is seen from the affidavit filed in support of the condone delay petition, originally the respondent engaged one R.Doss-Advocate to conduct appeal on his behalf. He met with a road accident and the appeal was dismissed for default on 05.11.2012. Thereafter, the respondent engaged a new Advocate and second application was filed to restore the appeal, which was dismissed for default.

6. The respondent in all fairness should have filed an application to restore earlier application filed by him in I.A.No.124 of 2013, which was dismissed for default. Instead of restoring the earlier application, the



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respondent filed another application in I.A.No.553 of 2016 to restore the appeal by suppressing the dismissal of the earlier application. When the second application came up for argument, it was pointed out by the petitioner that the respondent suppressed the dismissal of the earlier application and instead of restoring the same, filed second application to restore the appeal. Thereafter, the respondent not pressed the second application and filed the instant application to restore I.A.No.124 of 2013, which was dismissed for default. Therefore, the accident suffered by his previous counsel-R.Doss in the year 2013 cannot be the reason for explaining the delay from 2014 to 2017. In the interregnum period, the respondent engaged another Advocate and filed separate application to restore the appeal, instead of restoring the earlier application.

7. When his earlier application to restore the appeal in I.A.No.124 of 2013 was dismissed for default, the respondent should have filed an application seeking to restore the same. The second application filed by the respondent to restore the appeal is not at all maintainable.



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8. Taking into consideration the conduct of the respondent in dragging on the matter by filing various applications, this Court deems it appropriate that the respondent should be imposed with a condition to deposit 50% of the decree amount to the credit of the Subordinate Court, Kanchipuram.

9. Accordingly, the respondent is directed to deposit 50% of the decree amount together with interest as on today to the credit of A.S.No.17 of 2010 on the file of the Subordinate Court, Kanchipuram, within a period of six weeks from the date of receipt of copy of this order. In case, the respondent fails to deposit the amount as directed in this revision, the benefit of the impugned order passed in his favour will not enure and I.A.No.332 of 2017 will stand dismissed automatically without further reference to this Court. In case of deposit of half of the decree amount as directed above, the First Appellate Court is directed to take up the application filed by the respondent to restore I.A.No.124 of 2013 and the dispose of the same as expeditiously as possible.

10. Taking into consideration, the appeal is of the year 2010, the



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petitioner is not in a position to realise the fruits of the decree, which was passed in his favour more than a decade above, the First Appellate Court is directed to dispose of all applications and if necessary, the first appeal as well, as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this order.

11. With these directions, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected civil miscellaneous petition is closed.

23.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The Subordinate Judge,
Kanchipuram.



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S.SOUNTHAR, J.

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