

Chenniappan Vs. Valliammal

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Court : Chennai

Decided On : Jun-12-2013

Judge : K.Ravichandrabaabu

Appellant : Chenniappan

Respondent : Valliammal

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 12.06.2013
CORAM THE HONOURABLE Mr.JUSTICE K.RAVICHANDRABAABU
C.R.P.(NPD) No.2045 of 2013 and M.P.No.1 of 2013 1.Chenniappan 2.Parvathy
.Petitioners ..vs.1.Valliammal 2.R.Saraswathi .Respondents Prayer: Civil Revision
Petition filed under Article 227 of the Constitution of India against the fair and
decreetal order dated 15.03.2013 in I.A.No.598 of 2012 in A.S.No.117 of 2009 on
the file of the Principal District Court, Erode.

For Petitioners : Mr.M.Guruprasad

ORDER

This civil revision petition is filed against the order made in I.A.No.598 of 2012 in
A.S.No.117 of 2009 in condoning the delay of 613 days in representing the
application to set aside the order of dismissal of the appeal for default on
12.08.2010 and to restore the same.

2.The respondents herein have filed the above appeal aggrieved against the judgment and decree in O.S.No.175 of 2004 which came to be dismissed on 08.12.2008.

The said suit was filed by the respondents herein for partition against the petitioners herein.

As the said suit for partition came to be dismissed by the trial court, they preferred an appeal in time and however, when the matter was taken up for argument on 12.08.2010 by the Appellate Court, the respondents did not appear and consequently, the appeal came to be dismissed for default on 12.08.2010.

They filed the set aside petition on 13.09.2010.

When the set aside petition was returned by the office of the court below for effecting certain compliance, the same was not represented within the time and however, it came to be represented after a delay of 613 days by filing an application in I.A.No.598 of 2012, seeking to condone the said delay.

3.

In the affidavit filed in support of the said application, it is stated that the Advocate's Clerk of the respondents misplaced the returned papers with other bundles and inspite of the best efforts taken by their counsel, the said petition was not traced out.

Only in the last week, during the Ayutha pooja celebrations, while rearranging the case bundles in the counsel's office, their counsel traced out the returned papers and immediately, the same is represented before the court below with a delay of 613 days.

4.

The court below considered the said application and however, found that the reasons given by the petitioners in the affidavit shows that the above reasons are not true and was given mechanically by the counsel on record.

It is also observed by the court below that though the reasons appear to be unbelievable, the fact remains that the counsel on record has not attended the petitions from the very beginning to get the interlocutory application numbered and it indicates that the mistake is only on the part of the Advocate's Clerk and the above mistake cannot be attributed against the petitioners. It is also found by the court below that it is the dispute between the brother and sisters in respect of claiming share in their father's property and there is contentious issues available in the appeal and substantive right of the parties to canvass their case in the appeal cannot be defeated due to the mistake committed by the Advocate's Clerk in not getting the interlocutory application numbered in time.

Consequently, the court below has allowed the application with cost of Rs.5,000/- payable to the petitioners herein.

5. I find that the court below has exercised its discretion in condoning the delay of 613 days in representing the application to restore the appeal which came to be dismissed for default.

No doubt, the court below has found that the reasons stated in the affidavit appears to be unbelievable.

But, at the same time, the court below has also found that due to the fault of the Advocate's Clerk, the respondents herein cannot be made to suffer.

As it is categorically found by the court below that due to the mistake of the counsel or Advocate's clerk, the same cannot defeat the rights of the parties to substantiate their right in the appeal and that too, when the application is the one for seeking for condoning the delay in representing the petition to restore the appeal.

6.

Needless to say that applications filed to condone the delay in filing and representation are certainly not arising out of one and the same circumstances.

It is to be noted that the same yardstick cannot be applied in 'stricto sensu' for considering both the cases of petition to condone the delay in filing the proceedings and the petition to condone the delay in representing the same.

Certainly, the party who seeks the condonation of delay in filing the proceedings is necessarily to convince the court with justifiable cause or reason in not filing the said proceedings within the time stipulated.

Undoubtedly, such onerous is on the party who files the case with delay.

On the other hand, if the proceedings are filed in time without there being any delay and the papers were returned by the office of the court for effecting certain compliance, then the primary duty is cast upon the counsel of the said party to effect the compliance and represent the same before the Court within the time stipulated therein.

Of course, in some cases he may require some details from the party for effecting the compliance.

In certain cases, the compliance can be effected by the counsel without seeking any assistance from the party.

Therefore, the delay in representing the proceedings is not always attributable to the client.

Sometimes due to oversight or mistake committed by the counsel by not representing the papers in time, there could have occurred some considerable delay in representation.

But, the fact remains that the party has filed the proceedings well within time.

Therefore, consideration of the representation application cannot be done in the same manner as in the case of application seeking to condone the delay in filing the proceedings.

7. At this juncture, it is useful to refer to the decision of this Court reported in 1978 TNLJ332 THE GENERAL MANAGER, HEAVY VEHICLE FACTORY vs

T.SHADRAK, wherein it has been observed that there is a specific statute viz., the Limitation Act which imposes an obligation on the Court to reject the proceedings if it is barred by limitation and that strictness is not available or applicable to a case of delay in representation of the proceedings.

It is also observed therein that provisions and considerations that are applicable to excusing the delay under section 5 of the Limitation Act, will not apply to the question of excusing the delay in representing the papers. The said decision of this Court is also recently noted by the Hon'ble F.R.Bench in an unreported judgment dated 17.02.2011 in M.P.Nos.1/2009 in W.A.SR Nos.25899 of 2007, etc., Thus, it is crystal clear that yardstick for consideration is not one and the same for both the applications under section 5 of the Limitation Act and the one filed under section 151 C.P.C.to represent the papers. Therefore, the court below has rightly exercised its discretion and allowed the application seeking to condone the delay in representation, however by awarding cost to the other side.

8.Considering all the facts and circumstances, I find no irregularity or illegality in the order passed by the court below especially, when it has been specifically found that the mistake committed by the Advocate's Clerk cannot be attributed to the respondents herein to reject the application.

Thus, the court below while condoning the delay has also awarded cost of Rs.5,000/- to be payable to the petitioners herein.

When the petitioners are suitably compensated by awarding cost of Rs.5,000/-, I find there is no ground to interfere with the order passed by the court below.

Accordingly, the civil revision petition is dismissed.

No costs.

The connected miscellaneous petition is dismissed.

vri To The Principal District Court Erode

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