

J. John Rich Premkumar Vs. Usha Devi and Others

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Court : Chennai Madurai

Decided On : Oct-18-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(PD)(MD)No. 1756 of 2016

Appellant : J. John Rich Premkumar

Respondent : Usha Devi and Others

Judgement :

(Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying this Court to set aside the fair and decretal order made in unnumbered I.A in A.S.SR.No.2689 of 2014, dated 6.7.2016, on the file of the District Court,Kanyakumari District at Nagercoil.)

1. This revision has been filed seeking for a direction to set aside the fair and decretal order made in unnumbered I.A in A.S.SR.No.2689 of 2014, dated 6.7.2016, on the file of the District Court, Kanyakumari District at Nagercoil.

2. According to the Petitioner, that the revision petitioner is the appellant in the appeal filed before the District Court, Kanyakumari District at Nagercoil and was assigned as A.S.SR.No.2689 of 2014. The Petitioner herein filed Appeal Suit against the judgement and decree passed in O.S.No.35 of 2007, on the file of Subordinate Court, Padmanabhapuram, Kanyakumari District. The Petitioner has also filed an application under Section 149 of C.P.C to condone the delay of 183

days in representing the appeal for payment of deficit court fee. According to the Petitioner, the aforesaid appeal was filed on 13.11.2013 and the same was returned on 14.11.2013 for rectification of some defects, one month time was granted for rectification of the said defects. Since the appeal papers were misplaced in the Advocate's Office and the same could not be represented by the appellant and thus caused a delay of 183 days in representing the appeal for payment of deficit court fee in the aforesaid appeal. The said application was dismissed by the Court below, hence the Petitioner has come forward with the present Civil Revision Petition for the relief stated supra.

3. Notice has been served on the respondents, but none appeared for them.

4. The Petitioner has explained the reasons for the delay of 183 days in representing the appeal and in payment of deficit court fee. In the light of the decision of the Honourable Apex Court reported in 2013(5) LW Page 20, in the case of Esther Bhattacharjee .vs. Managing Committee of Raghunathapur Nafar Academy and others and following the above decision and this Court considering the liberal approach in condoning the delay, hence, the order passed by the trial Court is liable to be set aside.

5. In view of the above reasonings, considering the facts and circumstances of the case and in the interest of justice, this Court is inclined to pass the following Order:

The order passed in unnumbered I.A.../2014 in A.S.SR.No.2689 of 2014, dated 6.7.2016, on the file of the District Court, Kanyakumari District at Nagercoil is set aside and the delay in representation is condoned.

6. The Civil Revision Petition is allowed on above terms. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

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