

V.Ramsamy Vs. R.Muthusamy

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Court : Chennai

Decided On : Jun-21-2012

Judge : G.Rajasuria, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Section 115,

Appeal No. : C.R.P.(NPD).No.3820 of 2009 and M.P.No.1 of 2009

Appellant : V.Ramsamy

Respondent : R.Muthusamy

Advocate for Def. : Mr.N.Manokaran, Adv.

Advocate for Pet/Ap. : Mr.S.A.Hafiz, Adv

Judgement :

Civil revision petition filed under Section 115 of CPC against the fair and decreetal order of the learned Subordinate Judge, Tiruchengode, dated 05.08.2009 made in I.A.No.130 of 2008 in A.S.No.40 of 2006.

ORDER

Animadverting upon the order dated 05.08.2009 passed in I.A.No.130 of 2008 in A.S.No.40 of 2006 by the learned Subordinate Judge, Tiruchengode, this civil revision petition is focussed.

2. For convenience, the parties are referred to hereunder according to their litigative status and ranking before the trial Court.

3. The long and short of the germane facts in a few broad strokes could be encapsulated thus:

The revision petitioner filed the suit and obtained money decree as against the defendant who preferred appeal A.S.No.247 of 2005 in the Sub Court, Namakkal. It so happened that, from the said Court, the appeal was erroneously transferred to the District Court, Namakkal and renumbered as A.S.No.40 of 2006 and there it was dismissed for default. It is also a fact that a new Sub Court was constituted in Tiruchengode area and as such, the pending appeals of Tiruchengode area in Namakkal Court were also transferred.

4. According to the learned counsel for the respondent, even though the said appeal should not have been transferred to the District Court, Namakkal, yet the revision petitioner herein was bound to appear before the District Court and get the mistake rectified. But the said A.S. was allowed to be dismissed for default and after a huge delay of 559 days, an application was filed to get restored the said A.S. and it was allowed, subject to payment of Rs.1,500/- payable by the petitioner to the respondent.

5. The learned counsel for the revision petitioner would submit that the alleged wrong advice would not be a ground for condoning such huge delay and in support of his contention he would cite the decision reported in AIR 1973 PUNJAB & HARYANA 269 [Brij Bhushan and others v. Madan Mohan Lal]

6. I would like to fumigate my mind with the following decisions of the Hon'ble Apex Court:

(i) 2010(2) Supreme 115 (Oriental Aroma Chemical Industries Ltd., vs. Gujarat Industrial Development Corporation and another) and an excerpt from it would run thus:

"8.The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to

ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst.Katiji, (1987) 2 SCC 107, N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106."

(ii) AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others) also could fruitfully be cited; certain excerpts from it would run thus:

"13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses."
(emphasis added)

7. As such, in this case, it was not a mere wrong advice, but it was a wrong information virtually given by the Advocate to the party on the assumption that the A.S.No.247 of 2005 might have been transferred from the Sub Court, Namakkal to

the newly constituted Court at Tiruchengode, but it was wrongly transferred to the District Court, Namakkal and it was renumbered as A.S.No.40 of 2006. There is nothing to display and demonstrate that the counsel for the appellant/defendant had noticed that renumbered A.S.No.40 of 2006 was pending in the District Court, Namakkal. As such, I am of the view that no interference with the order passed by the appellate Court in condoning the delay is required. It is also a trite proposition of law that once the lower Court exercised its power to give opportunity to the defaulting party concerned to pursue the appeal, the High Court would be reluctant to interfere; in this case for the foregoing reasons, I am of the view that there is no willful default on the part of the respondent/defendant/appellant in prosecuting the appeal. However, the Court also awarded cost of Rs.1,500/- which could be enhanced to Rs.2,000/- (Rupees two thousand only) which shall be paid within a period of fifteen days from the date of receipt of a copy of this order. On complying with this order the appeal shall be heard by the Sub Court, Tiruchengode and the same be disposed of within a period of two months thereafter.

Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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