

(1997) 11 MAD CK 0029
In the Madras High Court

Dhanalakshmi and Others

APPELLANT

Vs

G. Mouna Gurusami Naicker and Others

RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Citation : (1998) 1 MLJ 458

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Judgement

S. Jagadeesan, J.—By consent of both the counsel, the civil revision petition is taken up for final disposal.

2. The petitioners have filed this revision against the order of the court below in condoning the delay of 5 years 10 months and 21 days in

representing the appeal. The contention of the counsel for the petitioner is that the inordinate delay had been condoned without any sufficient cause.

On the contrary, counsel for the respondent contended that the respondent has filed an affidavit stating that the respondent has filed an affidavit

stating that the papers were entrusted to the lower court counsel for filing the appeal and the respondent has been meeting the clerk of the counsel

on many occasions. On these occasions, the respondent was informed by the Advocate's clerk that the appeal is pending and whenever it is listed

for arguments, he would inform. Only in April, 1992 the Advocate's clerk informed the respondent that the appeal papers are missing. The

counsel also represented that due to the change of his residence, the papers might have been missed and instructed the clerk to search the appeal

papers. After thorough search, the papers were traced and represented with a petition for condoning the delay. The respondent has got into the box

and reiterated what is stated in the affidavit.

3. I also perused the affidavit filed by the respondent, as well as his evidence. From the available material on record, it is clear that the lower court

has accepted the explanation given by the respondent that the delay is only due to the mistake of the Advocate's clerk and also on his attitude in

not permitting the respondent to meet the counsel. Though the delay is inordinate one, I am of the view that in the interest of justice and in the

absence of any error of jurisdiction in the order of the court below, the judicial discretion exercised by the lower court need not be interfered with.

The lower court has allowed the application on terms of Rs. 1,000 by way of costs.

4. Considering the conduct of the Advocate's clerk in misplacing the papers and misrepresenting to the petitioner that appeal is pending and in not

permitting the respondent to meet the counsel, I am of the view that contributory negligence can be attributed to the lower court counsel also

vicariously as he has not shown any diligence to take care of the appeal as to whether it has been numbered or not, after filing the appeal.

Whenever any matter is being filed before the court, it is the duty of the counsel to verify whether the same has been numbered or not within a

reasonable time and if not it is his further duty to verify as to what happened. The advocates cannot be permitted by simply blaming their clerks,

because the briefs are entrusted to the Advocate by the clients only with the fond hope that the Advocate will take proper care of the same and not

the clerk will take care of the brief.

5. Hence, I think to compensate the prejudice that been caused to the petitioners, the lower court counsel of the respondent can be asked

personally to pay an additional cost of Rs. 2,500 to the petitioners herein especially considering the inordinate delay in representing the papers. But

for the suit being a partition one, and the appeal had already been numbered and await for disposal. I would not have allowed the order of the

court below to stand. If really the respondent is entitled for the relief of partition, due to the conduct of the counsel, he should not suffer. Hence the

additional cost is imposed, personally on the counsel.

6. The civil revision petition is dismissed. However, with a direction that the counsel for the respondent in the lower appellate court shall pay Rs.

2,500 personally to the petitioners herein within two weeks from to day, failing which, the civil revision petition shall stand allowed. Consequently, the civil miscellaneous petition is also dismissed.