

(2013) 08 MAD CK 0106
In the Madras High Court
Case No : C.R.P. (PD) No. 4458 of 2011

K.E. Sumitra and Others

APPELLANT

Vs

Smt. K.S. Indira, K.S. Chandrahas and K.S. Omprakash

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Limitation Act, 1963 — Section 5

Citation : (2013) 08 MAD CK 0106

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : D. Annadurai, for the Appellant; K.S.V. Prasad (R1 and R3) and Mr. R. Munuswamy for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrabaabu, J.—The present Civil Revision Petition is filled challenging the order of the Court below in dismissing the application

filed u/s 5 of the Limitation Act seeking to condone the delay of 755 days in filing the appeal before the Court below. The petitioners herein as

plaintiffs filed a suit in O.S. No. 279 of 2008 on the file of the City Civil Court, Chennai seeking for the relief of declaration and for consequential

injunction. In the said suit, the defendants filed I.A. No. 11240 of 2009 under Order 7 Rule 11 CPC to reject the plaint. The said application was

allowed as the plaintiffs did not appear before the Court and represent the matter on the said day. Aggrieved against the said order passed, the

petitioners herein preferred an appeal before the lower appellate Court, however, with a delay of 755 days. They also filed an application u/s 5 of

the Limitation Act seeking to condone the said delay in preferring the above appeal. The petitioners filed an affidavit in support of the said

application and stated that the 4th petitioner is the power agent of petitioners 1 to 3, 5 and 6 and he was conducting the proceedings on behalf of

other plaintiffs. It is further stated by them that the 4th petitioner fell ill due to typhoid for some time and therefore he could not contact his previous

counsel, who was engaged by him to conduct the case. As he was advised by the Doctor to take rest, he could be able to contact his counsel only

in the first week of April 2011 and thereafter they applied for the certified copy of the order passed in I.A. No. 11240 of 2009 dated 29.10.2009.

Thus, there occurred a delay of 755 days in filing the above appeal. The Court below has rejected the said contention by holding that the

petitioners have not shown sufficient cause to condone the delay of 755 days. Aggrieved against the same, the present Civil Revision Petition is

filed.

2. Learned counsel appearing for the petitioners submits that though the petitioners have not filed any proof before the Court below in support of

their contention, they may be permitted to do so now. I am unable to accept the said request made by the learned counsel. In this case, the appeal

came to be filed with a delay of 755 days. The illness of the 4th petitioner was stated as a reason for filing the appeal with such delay. It is stated

by the petitioners that the 4th petitioner fell ill due to typhoid and also with liver problem. Absolutely no supporting document viz., the medical

certificate has been filed by the petitioners before the court below to prove such contention. The petitioners have not examined anybody orally,

except by filing an affidavit in support of the application. Needless to say that mere filing an affidavit is not sufficient unless the contents of the said

affidavit are proved before the court by adducing material evidence. The court below has rightly rejected the application by holding that the

petitioners have not shown sufficient cause for condoning the delay of 755 days. Such an order made by the Court below by exercising its

discretion, need not be interfered with in the Civil Revision Petition, in the absence of any other contra material evidence or materials placed before

the Court below. Thus, I find that there are no merits in the Civil Revision and accordingly, the same is dismissed. No costs.