

(2013) 08 MAD CK 0207
In the Madras High Court
Case No : C.R.P. (NPD) No. 464 of 2013

P. Subramaniam and Others	Vs	APPELLANT
P. Amarasamy		RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A, 151

Citation : (2013) 08 MAD CK 0207

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : T. Murugamanickam, for the Appellant; V.S. Kesavan, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrababu, J.—The present Civil Revision Petition is filed against an order in dismissing the application filed under Order 41 Rule 3(A) and Section 151 CPC seeking to condone the delay of 80 days in presenting the appeal against the judgment and decree made in O.S. No. 309 of 2007 dated 13.4.2009. The petitioners herein are the defendants in the said suit. The respondent herein filed the said suit for bare injunction restraining the defendants/petitioners in any manner disturbing his peaceful possession and enjoyment of the suit property. The suit came to be decreed on 13.4.2009. Aggrieved defendants, who are the petitioners herein, filed an appeal before the Sub Court, Bhavani, however with a delay of 80 days. In order to condone the said delay, they also filed an application in I.A. No. 59 of 2009. It is stated in the affidavit filed in support of the said application that the third petitioner herein became ill and was suffering with Chickenkuniya during the relevant point of time and therefore he could not contact his counsel to file the above appeal in time. It is also stated in the affidavit that he is filing the affidavit on behalf of other petitioners also. The said application was resisted by the respondent herein. The Court below dismissed the said application by holding that the petitioners have

not explained the delay with sufficient cause.

2. Mr. T. Murugamanickam, learned counsel appearing for the petitioners submits that the third petitioner is the person who was conducting the proceedings on behalf of other petitioners and in fact written statement has also been filed by him which was adopted by the other petitioners. Therefore, he is the person who is conducting the proceedings on behalf of other petitioners also. When he became sick, the appeal could not be filed in time.

3. Per contra, the learned counsel appearing for the respondent submitted that the Court below has found that the third petitioner has not proved that he was suffering with Chickenkuniya by producing substantial material evidence and on the other hand, the respondent has proved with evidence that the petitioners' contention is false.

4. It is seen from the above said facts that the delay is 80 days in filing an appeal before the first appellate Court as against the judgment and decree made by the trial Court in a suit for bare injunction. Though in the affidavit filed in support of the application, it is not specifically stated that the third petitioner was conducting the proceedings on behalf of other petitioners, a perusal of the written statement filed by the defendants would show that only the third petitioner has filed the written statement and the other defendants have adopted the same. Therefore, the third petitioner seems to be the person in charge of conducting the proceedings on behalf of other petitioners. He has filed an affidavit by saying that he became sick and affected with Chickenkuniya during the relevant point of time. He has also examined himself as P.W. 1. No doubt, the respondent has marked Exs. R1 to R6 to show that the third petitioner was not at all sick and he has attended some other proceedings on certain dates. However, it is to be seen that the delay is sought to be condoned for filing the appeal. Therefore, if on the particular date, the very same third petitioner had appeared in some other court or some other proceedings, then his statement could have been taken as a false statement. But it is his case that due to such suffering of illness, he could not contact his counsel to file the appeal. Therefore, in my considered view, this reason stated by the third petitioner should have been considered with liberal approach more particularly, when the delay is 80 days. Accordingly, I find that the order passed by the Court below cannot be sustained and accordingly the same is set aside and I.A. No. 59 of 2009 in C.F.R. No. 7541 of 2009 is allowed however subject to the condition that the petitioners shall pay a sum of Rs. 2,500/- as cost to the respondent through the counsel who appeared for the respondent before this court within a period of two weeks from today. The Court below is directed to take up the appeal and dispose of the same on merits and in accordance with law within a period of two months from the date of receipt of copy of this order. The Civil Revision Petition is allowed on the above terms. No costs.