

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).17144/2013

(From the judgement and order dated 30/08/2012 in CRP No.2351/2011 of The HIGHCOURT OF MADRAS AT MADURAI)

R. KRSNA MURTHI

Petitioner(s)

VERSUS

K. SRIDHAR RAO AND ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T.and permission to appear and argue in person)

Date: 03/07/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Petitioner-in-Person

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

This petition is directed against order dated 30.8.2012 passed by the learned Single Judge of the Madras High Court, Madurai Bench whereby he dismissed the revision petition filed by the petitioner and upheld the order passed by the trial Court refusing to condone 2219 days delay in re-filing of the application for restoration of possession of the tenanted premises.

The suit (O.S. No.2953 of 1996) filed by the respondents for eviction of the petitioner was decreed by the trial Court. During the pendency of the execution petition, the respondents are said to have forcibly taken possession in the petitioner's absence. He filed application dated 28.11.2003 in the Court of Principal District Munsif, Trichy for restoration of possession. The Registry of the concerned Court returned the application with objections. For the next 7 years, the petitioner did not remove the objections. He re-filed the application on 21.1.2010. After 10 days he filed an application for condonation of 2219 days delay by stating that clerk of his advocate had mixed the file with the decided cases.

The application filed by the petitioner for condonation of delay was dismissed by the trial Court by recording the following observations:

"8. In the affidavit the petitioner states that the advocate's clerk has placed the bundle in the disposed rack and hence the case was not resubmitted within time. There was delay for 2219 days in resubmission of the petition i.e. it is prayed to condone the delay of 61/2 years. After the preparation of petition for 61/2 years the status of the petition as what had happened or why it was enquired and on this point to satisfy the Court no proper reasons were put forward. For resubmission of petition for 61/2 years in the affidavit the reasons stated or not believable and natural reason.

10. In the affidavit to condone the delay of 61/2 years some reason only is adduced and hence so only this Court is considering it. While considering the documents and other aspects this Court is deciding it as the relief is not to be

granted and hence the petition is dismissed, no cost."

The revision filed by the petitioner was dismissed by the learned Single Judge of the High Court, who agreed with the trial Court that the petitioner had failed to show sufficient cause which could justify condonation of over 6 years delay. Paragraph 25 of the order passed by the learned Single Judge, which contains reasons for his refusal to entertain the petitioner's prayer for condonation of delay, reads as under:

"In view of the above said decisions and the observation, this Court is of the considered view that the petitioner has failed to show sufficient cause for the long delay of 2219 days. As far as the contention that no lapse could be attributed is concerned, it is his own statement that he did not ask his advocate with regard to the stage of the case. The reason that his advocate was at fault is not specifically pleaded in the affidavit. He has stated that he could not meet his counsel, in view of the harassment perpetrated by the respondents, which does not find place in the affidavit. Under those circumstances, there is no valid ground or scope for condonation of delay and there is no circumstance to interfere with the order of the Court below, which deserves to be confirmed and it is accordingly, confirmed. The revision is devoid of merits, which deserves dismissal at the hands of this Court."

The petitioner argued that his advocate was responsible for delay in re-filing of the application but we are not inclined to entertain his plea because in the affidavit filed before the trial Court, it was nowhere mentioned that the advocate was responsible for delay in re-filing of the application. Rather, the averments contained in the affidavit show that the petitioner was lax in prosecuting his cause before the trial Court. Therefore, he cannot seek condonation of more than 6 years delay by shifting blame on the advocate.

With the above observations, the special leave petition is dismissed.

(Satish K.Yadav)  
Court Master

(Usha Sharma)  
Court Master

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