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SLP(C)No. 18132 OF 2000

ITEM No.210

Court No. 8

SECTION XII  
A/N MATTER

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.18132/2000

(From the judgement and order dated 28/08/2000 in CRP 1776/2000  
of The HIGH COURT OF MADRAS)

B. BALASUBRAMANIAM

Petitioner (s)

VERSUS

K. VIJAY KRISHNA

Respondent (s)

(With prayer for interim relief )  
( For Final Disposal )

Date : 16/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI  
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr.MB Rama Subba Raju,Adv.  
Mr. V.Sudeer,Adv.  
Mr. S. Srinivasan,Adv.

For Respondent (s) Mr.Allam Nagabhushanam,Adv.  
Ms. N.Annapoorani,Adv.

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

.....L....I.....T.....T.....T.....T.....T.....J.....J  
.SP2

Leave is granted.  
The appeal is allowed in terms of the signed order.  
There shall be no order as to costs.

.SP1

[Naresh Kumar]  
Court Master

[Kanwal Singh]  
Court Master

[Signed order is placed on the file.]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2113 OF 2001

(Arising out of S.L.P.(C) No.18132 of 2000)

B. Balasubramaniam

...Appellant

Versus

K. Vijaya Krishna

...Respondent

O R D E R

Heard the learned counsel for the parties.

Leave is granted.

The appellant is the tenant of premises (shop portion) bearing Door No.33, Anna Pillai Street, Madras - 600 079 of which the respondent is the landlord.

The appellant assails the order of the High Court of Judicature at Madras in C.R.P.No.1776/2000 and C.M.P. No.9562/2000 dated August 28, 2000. By that order the High Court set aside the order of the Appellate Authority (The Small Cause Court, Chennai) dated December 22, 1999, made in Miscellaneous Application No.2399/1999, condoning the delay in filing the appeal on payment of cost of Rs.1000/- to the respondent.

The High Court noted that the delay in filing the appeal was not of 25 days as calculated by the Appellate Authority but of 168 days and observed that itself was sufficient to set aside its order. It has also gone into the question as the appellant's promptness in conducting proceedings before the learned Rent Controller, for setting aside the order of the Appellate Authority.

The date when application for certified copy of the order was made and the date when it was made ready are not given by the High Court. It is also not mentioned as to whether the time permitted for obtaining certified copy of the order and the time for filing CRP have been excluded. Thus, from the order of the High Court it is not discernible as to how the delay of 168 days has been arrived at. If those periods are excluded, the delay will not be inordinate. Be that as it may, the facts do not smack of any negligence or dilatory tactics on the part of the appellant in filing the appeal. A perusal of the order of the Appellate Authority discloses that the trial court delivered the order, under appeal, on April 28, 1999 and it was from that date that the Appellate Authority computed the period of limitation. It also noted that the trial court was closed for summer vacation from May 1, 1999 to June 6, 1999. Inasmuch as the appellant did not apply for certified copy immediately on coming to know of the disposal of the eviction petition, on April 28 and on reopening of the court on June 7/8, 1999, the Appellate Court condoned the delay on payment of cost of Rs.1000/- on the appellant which is in conformity with the pronouncement of this Court in N. Balakrishnan Vs. M. Krishnamurthy [AIR 1998 S.C. 3222]. Though, the Appellate Authority found the period of delay to be of 25 days, the order nevertheless shows that it was satisfied with the explanation given by the appellant. What the High Court ought to have considered was whether there was reasonable ground to think that the delay was occasioned by the party deliberately to gain time and not how he was prosecuting the proceedings in the trial court.

In our view, on the facts of this case, the High Court, in exercise of its revisional jurisdiction, ought not to have interfered with the just and equitable discretionary order passed by the Appellate Authority condoning the delay in filing the appeal. For these reasons, the order of the High Court under Challenge cannot be sustained it is accordingly set aside. The order of the Appellate Court dated December 22, 1999 is restored. The Appellate Authority shall now dispose of the appeal on merits in accordance with law. The appeal is allowed accordingly. There shall be no order as to costs.

& & & & & & & & & & .J.

(Syed Shah Mohammed Quadri)

& & & & & & & & & & .J.

(S.N. Phukan)

New Delhi,  
March 16, 2001.

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