

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2345 of 2013 &

M.P.No.1 of 2015

1.Madhammal
2.V.Venkatesh

... Petitioners

v.

1.N.Srinivasan
2.Narasappa
3.Muniamma

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 25.08.2012 passed in I.A.No.10 of 2011 in unnumbered CMA. .../2011 on the file of the Sub Court, Hosur.

For Petitioner : Mr.T.Sathiyamoorthy

ORDER

Challenging the fair and final order passed in I.A.No.10 of 2011 in unnumbered CMA. .../2011 on the file of the Sub Court, Hosur, the petitioners have filed the above Civil Revision Petition.

2. Pursuant to the decree passed in O.S.No.37 of 1999 on the file of District Munsif Court, Hosur, the petitioners filed an Execution Petition in E.P.No.3 of 2002. In the said Execution Petition, the 1st respondent filed an application in R.E.A.No.3 of 2004 under Order 21, Rule 97 of CPC. After contest, the Execution Court allowed the application. Thereafter, the decree holders filed an application in I.A.No.10 of 2011 to condone the delay of 1404 days in filing the appeal as against the order passed in R.E.A.No.3 of 2004.

3. In the affidavit filed in support of the application in I.A.No.10 of 2011, the petitioners have stated that they were not informed by the counsel with regard to the order passed in R.E.A.No.3 of 2004 and therefore, they were not in a position to file the appeal in time. Further the 2nd petitioner has stated that since he was away from the residence, he was not in a position to get the details of the application filed by them before the Execution Court.

4. The 1st respondent filed his counter wherein he disputed the averments stated in the affidavit filed in support of the application.

5. The Lower Appellate Court, taking into consideration the case of both the parties, came to the conclusion that the petitioners have not explained the reasons in an acceptable manner and dismissed the application.

6. The learned counsel appearing for the petitioners submitted that in order to give an opportunity to the petitioners, the Lower Appellate Court, should have condoned the delay in filing the appeal. In support of his contention, the learned counsel, relied upon a judgment reported in **2002(3) L.W.417 [Ram Nath Sao @ Ram Nath Sahu & Ors.]** wherein the Hon'ble Supreme Court condoned the delay of 130 days in filing the petition for setting aside the abatement caused due to the death of the party. In the said Judgment, the Hon'ble Supreme Court observed that in every case of delay, there can be some lapse on the part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him.

7. In the case on hand, though the application in R.E.A.No.3 of 2004 was allowed four years back, the petitioners have chosen to file the appeal after a lapse of nearly 4 years stating that their counsel did not inform them

about the result in R.E.A.No.3 of 2004.

8. It is settled position that in order to condone the delay, the party should give sufficient cause. In the absence of sufficient cause shown by the party, the delay need not be condoned.

9. Though there is no dispute with regard to the ratio laid down in the Judgment relied upon by the learned counsel for the petitioners, since the facts and circumstances of case on hand is completely different, the said ratio is not applicable to the present case. Taking into consideration all these aspects, the Lower Appellate Court has rightly dismissed the application.

10. In these circumstances, I do not find any reason to interfere with the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Rj

10.12.2015

To
The Sub Court,
Hosur.

M. DURAISWAMY,J.,

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