



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2015

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.NPD (MD).No.2545 of 2014
and

M.P.(MD) No.1 of 2014

1. V.S.R.Mohanlal
2. Dinesh Babu
3. Eswarlal
4. Kesavan
5. Hariharan
6. Narayanan
7. Ramkumar

... Petitioners/
Respondents 1 to 7/ Plaintiffs

Vs.

1. Palanivel
2. Chandra

... 1st Respondent/Petitioner/
1st Defendant
... 2nd Respondent/
8th Respondent/2nd Defendant

Prayer : Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 5th September 2014 passed in I.A.No.57 of 2014 in I.A.No.152 of 2012 in O.S.No.8 of 2011, on the file of the learned District Munsif cum Judicial Magistrate at Rameshwaram.

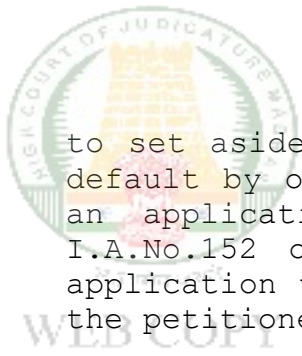
For Petitioners : Mr.D.Arun Kumar

For Respondents : Mr.S.Chellapandian
for R.1
: No Appearance for R.2

ORDER

The Civil Revision Petition is directed against the order dated 5-September-2014, in I.A.No.57 of 2014 in I.A.No.152 of 2012 in O.S.No.8 of 2011, on the file of learned District Munsif cum Judicial Magistrate, Rameshwaram, allowing the application filed by the first respondent to condone the delay of 427 days in filing the application to restore the application in I.A.No.152 of 2012.

2. The petitioners filed a civil suit against the respondents herein praying for a decree of permanent injunction. The suit was decreed exparte on 10.08.2011. The first respondent filed an application in I.A.No.152 of 2012 to condone the delay of 362 days in filing the petition



to set aside the exparte decree. The said application was dismissed for default by order dated 21.01.2013. The first respondent thereafter filed an application in I.A.No.57 of 2014 to restore the application in I.A.No.152 of 2012, after condoning the delay of 427 days. The said application was allowed by the trial Judge. Being aggrieved by the same, the petitioners have come up with the Civil Revision Petition.

3. The learned Counsel for the petitioners contended that the application under Section 5 of the Limitation Act is not maintainable to condone the delay in filing application to restore the application filed under Section 5 of the Limitation Act. The learned Counsel placed reliance on Section 3 of the Limitation Act in support of his contention.

4. I have also heard the learned Counsel for the respondents.

5. The first respondent filed an application in I.A.No.152 of 2012 to condone the delay in filing application to set aside the exparte decree. The said application was dismissed for default. The first respondent thereafter filed an application in I.A.No.57 of 2014 to restore the application in I.A.No.152 of 2012. The application was filed to condone the delay.

6. The application filed under Section 5 of the Limitation Act was allowed by the trial Judge.

7. The core question is as to whether an application under Section 5 of the Limitation Act would lie to condone the delay in filing the application to set aside the order dismissing the application filed under Section 5 of the Limitation Act.

8. Section 5 of the Limitation Act provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure may be admitted after the prescribed period, in case the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

9. The word used is "any appeal or any application" meaning thereby that any application filed after the prescribed period would attract Section 5 of the Limitation Act. I therefore reject the contention taken by the learned Counsel for the petitioners to the effect that application is not maintainable to restore the application filed under Section 5 of the Limitation Act.

11. The trial Judge was perfectly correct in entertaining the application filed by the first respondent to condone the delay in filing the application in I.A.No.57 of 2014 to restore the application in I.A.No.152 of 2012.

12. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar



To
The District Munsif cum Judicial Magistrate, Rameshwaram.

+1cc to Mr.Arun Kumar, Advocate, in SR. No. 17979

+1cc to Mr.S.CHELLAPANDIAN, Advocate, in SR. No. 17955

TS/08.05.2015/3P-4C

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