

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.540 of 2015
and M.P.No.1 of 2015

1.Madras Litrex Pvt Ltd.,
rep by its Managing Director,
Vinod Bhatla
No.132, St.Mary's Road,
Alwarpet, Chennai - 600 018.

2.Rekha Bhatla

3.Vinay Bhatla

... Petitioners

Vs.

1.C.R.Gajapathy

2.Kowsalya

3.Indira

4.C.R.Narayanan

5.Rajalakshmi

6.Shanthi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree order dated 08.12.2014 made in I.A.No.72 of 2013 in un-numbered A.S.No. of 2013 on the file the Subordinate Judge, Ponneri.

For Petitioners : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.Velumani

For Respondents : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.R.Munuswamy (R1 & R4)

ORDER

Challenging the fair and final order passed in I.A.No.72 of 2013 in an un-numbered A.S.No. of 2013. The plaintiffs in O.S.No.5 of 2006 on the file of the District Munsif Court, Ponneri have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.5 of 2006 for permanent injunction.

3.After contest, the trial Court dismissed the suit. Aggrieved over the dismissal of the suit in O.S.No.5 of 2006, the plaintiffs have preferred an appeal before the Subordinate Court, Ponneri with a delay of 47 days in filing the appeal. In the affidavit filed in support of the petition, the petitioners have stated that the trial Court dismissed the suit on 22.02.2013 and that their counsel applied for the certified copies of the judgment and decree on the same day and though the copies were made ready on 03.05.2013, their counsel took delivery of the same only on 28.06.2013. Thereafter, the petitioners filed the appeal on 19.07.2013 with a delay of

47 days in filing the appeal. The petitioners have stated that the delay in filing the appeal was solely because of the reason that their counsel did not take delivery of the certified copies of the judgment and decree in time. The revision petitioners filed their counter wherein they have disputed the averments stated in the affidavit filed in support of the petition and stated that the respondents have not given sufficient reason for condoning the delay of 47 days.

4.Mr.T.R.Rajagopalan, learned senior counsel appearing for the petitioners submitted that the respondents have thrown the blame on their counsel for the condonation of the delay of 47 days. Further, the learned senior counsel submitted that the respondents cannot simply throw the blame on the counsel and get the delay condoned. The learned senior counsel further submitted that when the respondents/plaintiffs have stated that no appeal has been filed as against the dismissal of the suit in O.S.No.5 of 2006, they cannot blame their counsel for not filing the appeal in time.

5.On a perusal of the materials available on record, it could be seen that the respondents/plaintiffs have applied for the certified copies of the judgment and decree on the date of pronouncement of the judgment itself (i.e.) 22.02.2013 and also paid the stamp duty on 23.04.2013. The trial

Court also made ready the certified copies of the judgment and decree on 03.05.2013. However, the respondent's counsel did not take delivery of the certified copies of the judgment and decree in time and took delivery of the same only on 28.06.2013. All these dates are mentioned in the certified copies of the judgment and decree and therefore, the delay in filing the appeal by the respondents/plaintiffs is only because of the counsel who had not taken delivery of the certified copies of the judgment and decree immediately after 03.05.2013. The appeal was filed before the Subordinate Court, Ponneri on 19.07.2013. Therefore, the contention of the learned senior counsel that the respondents/plaintiffs cannot throw the blame on their counsel for the purpose of condonation of delay cannot be accepted for the reason that the averments stated in the affidavit filed in support of the petition are supported by the dates mentioned in the certified copies of the judgment and decree. The Lower Appellate Court, taking into consideration the case of both parties, rightly allowed the petition.

6.Mr.AR.L.Sundaresan, learned senior counsel appearing for the respondents plaintiffs submitted that the Lower Appellate Court had already numbered the First Appeal as A.S.No.72 of 2014 and the same is being posted for hearing.

7. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

19.01.2016

To

The Subordinate Judge,
Ponneri.

M.DURAIWAMY,J.
va

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