

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.55 of 2015

1.P.Kandasamy
2.P.Ponnayee
3.Saraswathi

.. Petitioners/Appellants 3 to 5

Vs.

1.S.Rasayee
2.M.Sellapa gounder
3.S.Selvaraju
4.S.Rajavelu
5.K.Rajendran
6.P.Subramani

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 05.04.2014 made in unnumbered I.A.No. of 2014 in unnumbered A.S.No. of 2014 on the file of the Sub-Court, Sankari and consequently, allow the unnumbered interlocutory application in unnumbered A.S.No. of 2014 on the file of the Sub-Court. Sankari.

For Petitioners : Mr.S.Viswanathan

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 05.04.2014 made in unnumbered I.A.No. of 2014 in unnumbered A.S.No. of 2014 on the file of the Sub-Court, Sankari and consequently, allow the unnumbered interlocutory application in unnumbered A.S.No. of 2014 on the file of the Sub-Court. Sankari.

2.Report has been called for by my Brother Justice Mr.K.Kalyanasundaram, as soon as the matter was posted on 22.01.2015. Report has been received. Thereafter, when the matter was called, no representation on behalf of the petitioner. Then the matter was posted today.

3.Learned counsel appearing for the petitioners/appellants 3 to 5 would submit that the petitioners have preferred an appeal against the decree and judgment dated 04.07.2012 made in O.S.No.237 of 2006 on the file of the District Munsif Court, Sankari, along with an application in I.A.No. of 2014 to excuse the delay of 186 days for representing the appeal. The first Appellate Court

rejected the application on the ground that in spite of sufficient opportunity given to the appellants/petitioners herein, they have not complied with the order of return. Challenging the rejection, the present revision is preferred.

4.At the time of admission, argument of the learned counsel for the petitioners is heard in length.

5.On perusal of the report shows that the appeal has been presented before the Appellate Authority on 03.12.2012, which was returned for seven reasons including payment of insufficient Court fee. The main appeal was again represented on 28.02.2013, which was returned on 07.03.2013 for compliance of previous order of return. Later, it was represented on 11.09.2013, which was again returned on 14.09.2013 for non compliance of previous return Nos.4, 5, 7 and for want of delay excuse petition. Again, the above appeal was represented on 10.10.2013 along with delay excuse petition. But in the cause title of the delay condoning petition, the name of all the parties was not mentioned and hence, it was returned. Furthermore, the petitioners failed to mention the number of days delay. The petitioners also failed to make an endorsement of representation in the delay condoning petition. Since the order of return was not

complied with properly in spite of several returns, the matter was called in the open Court on 01.04.2014 and after hearing the petitioners' side, the order has been passed on 05.04.2014.

6. Thereafter, the present revision was filed and it was posted on 22.01.2015, on which date, this Court called for report from the trial Court. The report has been received on 10.02.2015 and then the matter was called on 13.02.2015 and 20.02.2015, but there was no representation on behalf of the petitioners on those days. Then the matter was posted on 27.02.2015 'for orders'. Now only the matter is placed before me, which shows the lethargic attitude of the petitioners for not want to comply with the compliance properly.

7. Considering the aforesaid circumstances of the case, I am of the view that the petitioner only with a view to drag on the proceedings to prevent the respondent to enjoy the fruits of the decree, preferred the appeal with the delay of 186 days in defective manner. Even it was returned several times, it was not represented in time after compliance of the returns. It clearly shows the lethargic attitude of the petitioner to drag on the proceedings. The first appellate Court after considering all the aspects in proper perspective, rightly rejected the application, without numbering.

Therefore, I do not find any infirmity or illegality in the fair and decreetal order passed by the first appellate Court and the same is hereby confirmed. Consequently, the Civil Revision Petition is dismissed.

8.In the result, the Civil Revision Petition stands dismissed by confirming the rejection order dated 05.04.2014 in unnumbered I.A.No. of 2014 in unnumbered A.S.No. of 2014. No costs.

23.12.2016

kj

Index:Yes/No
To

The Sub-Court, Sankari.

R.MALA,J.

C.R.P(NPD).No.55 of 2015

23.12.2016