

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP.NPD.No.3074 of 2010

1.V.Kaliappan

2.V.Vetrayan

3.V.Mani

4.V.Chinnakannan

5.V.Chinnasamy

6.K.Chinnasamy

..Petitioners

Vs.

C.Viswanathan

..Respondent

Prayer:- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the order and decretal order in I.A.No.90 of 2009 passed in A.S.No.unnumbered/2009, on the file of the Principal Subordinate Judge, Krishnagiri dated 16.04.2010.

For Petitioners

: Ms.R.Sripriya
for M/s.V.Raghavachari

For Respondent

: Mr.V.Senthil Raj

ORDER

This Civil Revision Petition arises against the order passed on 16.04.2010 in I.A.No.90 of 2009 in A.S.No.unnumbered/2009, by the learned Principal Subordinate Judge, Krishnagiri.

2. The revision petitioners/plaintiffs have filed the suit in O.S.No.254 of 2007 before the District Munsif Court, Krishnagiri praying for declaration and for permanent injunction. The said suit was rejected on 05.11.2008. Against the rejection order, an appeal was filed by the Plaintiffs before the learned Principal Subordinate Judge, Krishnagiri. Since there was a delay of 33 days in filing the appeal, the petitioners/ plaintiffs filed a petition in I.A. No. 90 of 2009, to condone the delay and number the Appeal. However, the said I.A. No.90 of 2009 was dismissed by the learned Principal Subordinate Judge, Krishnagiri, on 16.04.2010. Aggrieved by the said dismissal order, the petitioners/ plaintiffs are before this Court.

3. Learned counsel for the petitioners submitted that the 6th petitioner, on behalf of the other petitioners, filed an affidavit before the lower court, in support of the petition for condoning the delay, in I.A.No.854 of 2008 in O.S.No.254 of 2007, stating that as the petitioners were contemplating to file a revision before this Court, against the order in I.A.No.854 of 2008 in O.S.No.254 of 2007, the above appeal could not be filed in time and hence a delay

of 33 days has occurred, in filing the above appeal.

4. Learned counsel for the respondent would submit that no proper reasons have been explained in the affidavit, filed in support of the petition by the revision petitioners, for the delay. He further submitted that the petitioners have suppressed the fact that cost has been imposed and only with a view to drag on the matter, they have filed this petition. Therefore, the application filed by the petitioners, is liable to be set aside.

5. Heard Ms.R.Sripriya, learned counsel for the petitioners as well as Mr.V.Senthil Raj, learned counsel for the respondent and perused the material available on record.

6. The Learned District Munsif, Krishnagiri while dismissing the suit on 05.11.2008, in O.S. No. 254 of 2007 ordered for payment of cost of Rs.500/- but the same was not paid by the plaintiffs/ petitioners. Hence, I.A.No.90 of 2009, seeking for condonation of delay, was dismissed by the learned Principal Subordinate Judge, Krishnagiri. Aggrieved against the said order, this revision has been filed before this Court.

7. Perusal of the records would reveal that only due to the failure of the petitioners/ revision petitioners to pay the costs imposed by the trial court, the petition in I.A.No.90 of 2009 for condoning the delay, was dismissed. The question as to whether the petitioner is entitled for getting the relief raised in the Appeal, has to be decided by the Court, after giving opportunity of hearing for both parties. The learned counsel for the respondent though initially objected for allowing the Civil Revision Petition, subsequently agreed, if the cost caused on the petitioner/ revision petitioner is enhanced, since the cost imposed by the trial court is only a meagre amount of Rs.500/-.

8. There is some force in the contention of the learned counsel for the respondent that the payment of cost, imposed by the Court below, is very meagre and therefore, this court is inclined to enhance the cost to a sum of Rs.2,500/-(Rupees Two Thousand and Five Hundred only), which shall be paid by the petitioners/ revision petitioners to the learned counsel for the respondent, within a period of one week from today, failing which, this Civil Revision Petition shall stand dismissed, automatically. On the other hand, on payment of such amount, I am inclined to pass the following orders:

a) the order dated 16.04.2010 passed by the Principal

Subordinate Judge, Krishnagiri in I.A.No.90 of 2009, is set aside.

b) the Trial Court is directed to number the appeal, if it is otherwise in order and proceed accordingly. No costs.

Post this case on 29.04.2016 for reporting compliance.

21.04.2016

gv/avr

Note: Issue order copy on 26.04.2016

To

The Subordinate Judge,
Krishnagiri.

D.KRISHNAKUMAR,J.
gv/avr

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