

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).Nos.2530 & 2531 of 2016

M.K.Anusuya (Deceased)

1.M.K.Yasodha

2.M.K.Vijayalakshmi

3.G.Sampath Kumar

4.Rajalakshmi

5.Lalitha

6.Sasikala

7.Boopathy

8.Padmini

9.Sumathi

10.D.Manuraj

... Petitioner in both C.R.Ps

Vs.

1.M.K.Babu

2.M.K.Radhakrishnan

... Respondents in both C.R.Ps

Civil Revision Petitions filed under Section 115 of the Civil Code of Procedure against the fair and decreetal order dated 28.06.2016 passed in C.M.P.Nos.1061 & 1062 of 2015 in A.S.(SR).Nos.56055 of 2011 on the file of the Principal Judge, City Civil Court, Chennai.

For Petitioners : Mr.M.S.Murali
(in both C.R.P.s) for M/s.R and P Partners

For Respondents : Mr.David Tyagaraj
(in both C.R.P.s)

COMMON ORDER

Challenging the common orders passed in C.M.P.Nos.1061 & 1062 of 2015 in A.S.(SR).No.56055 of 2011 on the file of the Principal Judge, City Civil Court, Chennai, the plaintiff in O.S.No.2575 of 2010 on the file of the 12th Assistant Judge, City Civil Court, Chennai have filed the above Civil Revision Petitions.

2.The plaintiffs filed the suit in O.S.No,2575 of 2010 for partition, separate possession and for mesne profits.

3.In the said suit, the 1st defendant filed an application in I.A.No.2718 of 2011 under Order 7 Rule 11 of the Civil Procedure Code to reject the plaint.

4.The trial Court, taking into consideration the case of both parties, by order dated 28.03.2011, rejected the plaint. Aggrieved over the same, the plaintiffs filed an Appeal in A.S.(SR).No.56055 of 2011. Subsequently, the Registry of the City Civil Court returned the papers for complying with

the defects. Thereafter, the papers were re-presented with a delay of 1225 days at the first instance and when the papers were returned for the 2nd time, there was a delay of 77 days in re-presenting the papers. Hence, the plaintiffs filed applications in C.M.P.Nos.1061 & 1062 of 2015 to condone the delay of 1225 days and 77 days in re-presenting the papers.

5.In the affidavit filed in support of the petitions, the plaintiffs have stated that since their counsel did not inform them about the returns made by the Registry of the City Civil Court, there was a delay of 1225 days and 77 days in re-presentation. The plaintiffs cannot keep quiet for nearly four years for re-presentation without enquiring with their counsel. In the absence of sufficient reason given by the plaintiffs, the Lower Appellate Court has rightly dismissed the petitions.

6.It is settled position that a party seeking for condonation of the delay should give sufficient reason for the same.

7.The ratio laid down by the Hon'ble Supreme Court in **(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]** squarely applies to the facts and circumstances of the present case.

8.The petitioners cannot blame their counsel even without naming the counsel in the affidavit and seek for condonation of the inordinate delay of 1292 days in re-presentation. In the case on hand, the petitioners have blamed their counsel for not re-presenting the papers in time. The conduct of the parties would establish that they were not diligent in prosecuting the matter in a proper manner. In these circumstances, the dismissal of the applications by the Lower Appellate Court is perfectly correct.

9.I do not find any reason to interfere with orders passed by the Lower Appellate Court. The Civil Revision Petitions are devoid of merits and are liable to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs.

Index : No
Internet : Yes
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19.08.2016

To

The Principal Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.
va

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