

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.927 of 2016

1.Vijayalakshmi
2.Pappammal
3.Minor Vetriselvan
Rep. By his Guardian & Mother
Vijayalakshmi

... Petitioners

v.

1.Gurrappa
2.Simbeerappa

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 5.7.2013 made in I.A.No.208 of 2013 in O.S.No.186 of 2010 on the file of Subordinate Judge, Hosur.

For Petitioners : Mr.P.Vasanth

For Respondents : Mr.R.Selvakumar

ORDER

Challenging the fair and final order passed in I.A.No.208 of 2013 in O.S.No.186 of 2010 on the file of Subordinate Court, Hosur, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.186 of 2010 for specific performance. The defendants filed their written statement and were contested the suit. When the suit was posted for trial, the plaintiffs remained absent and therefore, the suit was dismissed for non-prosecution on 06.01.2012. Thereafter, the plaintiffs filed an application in I.A.No.208 of 2013 to condone the delay of 397 days in filing the application to restore the suit under Order 9, Rule 9 of Civil Procedure Code.

3. In the affidavit filed in support of the application, the first petitioner has stated that her husband had died and she had gone to Bangalore for coolie work and when the suit was posted for enquiry on 6.1.2012, she could not appear before the Trial Court, since she was at Bangalore and therefore, the suit was dismissed for non-prosecution. Further, she has stated that she came to know about the dismissal of the suit only when she met her counsel after a long time. Hence, there is a delay of 397 days in filing the application to restore the suit.

4. The respondents-defendants filed their counter disputing the averments stated in the affidavit filed in support of the application.

5. The Trial Court, taking into consideration the case of both the parties, dismissed the application, finding that the reasoning given by the plaintiffs cannot be accepted.

6. On a perusal of the materials available on record, it could be seen that an agreement was entered into between the first petitioner's husband and the defendants. Subsequently, first petitioner's husband had died and thereafter, the legal representatives of the deceased, viz., plaintiffs have filed the suit.

7. Learned counsel appearing for the petitioner submitted that the first petitioner had gone to Bangalore for avocation and therefore, she was not in a position to appear before the Trial Court.

8. Since after the death of first petitioner's husband, she could have gone to work, she could not have appeared before the Trial Court and prosecuted the suit in a proper manner, I am of the view that in the interest of justice, the plaintiffs can be given an opportunity to prosecute the suit on merits. Hence, the delay of 397 days in filing the application to restore the suit can be condoned.

9. Accordingly, the fair and decreetal order passed in I.A.No.208 of 2013 are set aside and the application in I.A.No.208 of 2013 stands allowed on condition that the petitioner paying a sum of Rs.7,500/- (Rupees seven thousand and five hundred only) to the respondents, within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the petitioners are at liberty to pay the said sum of Rs.7,500/- to the counsel appearing on behalf of the respondents in this Civil Revision Petition before this Court within the stipulated time. Since the suit is pending from 2010, I direct the Subordinate Judge, Hosur, to dispose of the suit in O.S.No.186 of 2010 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs.

Index : Yes/No

10.06.2016

Rj

To

The Subordinate Court
Hosur.

M. DURAISWAMY,J.,

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