



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2481 of 2016 (PD)

and

C.M.P (MD) No.11703 of 2016

WEB COPY

1.S.Sulochana

2.S.Kumar

3.S.Preethakumari

4.Preja Kumari

..Petitioners/Petitioners/Defendants

Vs.

S.Balachandran

..Respondent/Respondent/Plaintiff

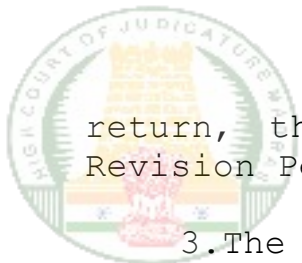
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the docket order, dated 13.03.2015 made in Unnumbered I.A. Of 2014 in O.S.No.319 of 1999, on the file of the Principapl Sub Court, Nagercoil and to direct the Learned Principal Subordinate Court, Nagercoil to number the I.A. for Sec 5 application and proceed the same on merits and pass appropriate orders on merits.

For Petitioners : Mr.S.Rajasekar

ORDER

This petition has been filed by the petitioner to set aside the docket order, dated 13.03.2015 made in Unnumbered I.A. Of 2014 in O.S.No.319 of 1999, on the file of the Sub Court, Nagercoil and to direct the Learned Principal Subordinate Court, Nagercoil to number the I.A.

2.The petitioners are the legal heirs of Late. Subramaniam/defendants in O.S.No.319 of 1999. The respondent is the plaintiff. He filed a suit for recovery of money. The said suit was decreed ex-parte on 21.09.2001. Subsequently, the defendant died on 29.08.2004. The respondent filed E.P.No.90 of 2013 against the petitioners. On receipt of notice in the Execution Proceedings, the petitioners filed first appeal before the District Court, Nagercoil at Kanyakumari District with petition to condone the delay in filing the first appeal. The same was returned stating that petitioner must file petition to set aside the ex-parte decree instead of appeal. The petitioners filed three applications to condone the delay in filing the set aside petition, set aside the ex-parte decree and impleading them as LR's of defendant in the suit before the Principal Sub Court at Nagercoil. The Principal Sub Court at Nagercoil returned the applications stating that "delay days not correct" and stated that the number of days is not correctly mentioned. Against the said



return, the petitioners have come out with this present Civil Revision Petition.

3. The learned counsel for the petitioners submitted that the number of days mentioned in the petition is correct. The petitioners have calculated the number of days of delay from the date of their knowledge of ex-parte decree from 07.10.2013 and in this regard he relied on the judgement of *Bhagmal v. Kunwar Lal* reported in 2010(5) CTC 827 and prayed for allowing the Civil Revision Petition.

4. I have heard the learned counsel appearing for the petitioners and also perused the entire materials on record.

5. It is seen from the records that the petitioners have not re-presented the petitions and submitted that as per the Apex Court Judgment they have correctly stated the number of days delay. The date of knowledge of the petitioners about the ex-parte decree by the petitioners and whether the number of days delay as mentioned by the petitioners is correct or not, cannot be decided by the Registry. This issue has to be decided only by the Principal Sub Judge, Nagercoil. It is open to the petitioner to rectify the defects pointed out by the Court and re-present the same and make submission before the concerned Court.

6. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar(CS)

To
The Principal Subordinate Judge,
Principal Subordinate Court,
Nagercoil.

Copy to : The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.T.Lajapathi Roy, Advocate in SR.80254

C.R.P (MD) No.2481 of 2016(PD)
05.12.2016

am

PBK/CK/SAR-I 20.12.2016 ::2P-4C: