



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.316 of 2016 (NPD)

and

C.M.P(MD)No.1344 of 2016

1.Subbulakshmi
2.Gopalasamy
3.Kavitha
4.Jeyaraman
5.Umapathi

.. Petitioners

Vs.

1.Dhanalakshmi
2.Rajeswari

.. Respondents

PRAYER: Civil Revision Petition is filed, under Section 115 of Code of Civil Procedure, to set aside the order, dated 07.10.2015 passed in I.A.No.17 of 2015 in Unnumbered A.S.No. Of 2015 on the file of the Sub Court, Srivilliputhur.

For Petitioners : Mr.D.Srinivasaragavan
For Respondent : Mr.J.Sureshkumar

ORDER

The petitioners are the defendants in O.S.No.403 of 2000. The respondents filed a suit in O.S.No.403 of 2000, on the file of the Additional District Munsif Court, Srivilliputhur for declaration and injunction. In the said suit, the petitioners filed counter claim. By the Judgment and decree, dated 29.10.2008. The trial Court dismissed the suit as well as the counter claim, the respondents filed A.S.No.9 of 2009, on the file of the Sub Court, Srivilliputhur, against the dismissal of the suit. The petitioners due to un-avoidable reason could not file the appeal against the dismissal of counter claim. Thereafter, in the year 2014, the petitioners filed appeal against the dismissal of the counter claim along with I.A.No.17 of 2015 for condoning the delay of 2111 days in filing the appeal. The delay in filing the appeal against the dismissal of the counter claim is neither willful nor wanton. In the said I.A., the respondents filed counter affidavit and stated that the petitioner already filed cross-objection with a petition to condone the delay in filing. Subsequently, it was returned for certain compliances and it was not represented and the petitioners entered appearance in the first appeal and the arguments were heard and it was posted for judgment. At that stage, the petitioner filed this petition

to condone the delay of 2111 days in filing appeal against the dismissal of the counter claim and prayed for dismissal of the I.A., The learned Judge considering the facts and circumstances of the case and considered all the materials on record, dismissed the I.A.No.17 of 2015, on 07.10.2015, filed by the petitioners. Against the said order of dismissal, the petitioners have filed the present Civil Revision Petition.

2.The learned counsel for the petitioners contended that the learned Judge failed to see that the appeal filed by the respondents against the common judgment is pending and therefore, ought to have allowed the I.A., The petitioners 1 & 4 are senior citizens and they fell ill during the relevant point of time. The petitioners have given valid and sufficient reason for condone the delay.

3.The learned counsel for the respondents submitted that the petitioners contested the appeal filed by the respondents and arguments of counsel for the petitioners and the respondents were heard and it is posted for judgment. At that time, the petitioners filed the petition to condone the delay of filing the appeal against the dismissal of the counter claim is only to drag-on the proceedings and attitude of the petitioner is not bonafide and the reason given by the petitioners is not sufficient and valid and prayed for dismissal of the Civil Revision Petition.

4.I have heard Mr.D.Srinivasaragavan, learned counsel appearing for the petitioners and Mr.J.Sureshkumar, learned counsel appearing for the respondents and also carefully perused the entire materials on record.

5.From the materials, it is seen that the petitioners have entered appearance in A.S.No.9 of 2009 and it is posted for judgment after the hearing the petitioners and the respondent. In the circumstances, the reason given by the petitioner is not valid and sufficient and the learned Judge considered all these aspects and dismissed the I.A.,No.17 of 2015 filed by the petitioners and there is no reason warranting interference by this Court.

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

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge, The Subordinate Court, Srivilliputhur.

+One cc to Mr.D.Srinivasaragavan, Advocate, SR.No.10050

+One cc to Mr.J.Sureshkumar, Advocate, SR.No.10036

am

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