

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRP.(NPD)No.2920 of 2017
and CMP No. 13782 of 2017

1. Perumal
 2. Mani

... Petitioners/Defendants

VS.

Josephy Premraj

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to allow the Revision Petition by setting aside the order in I.A.No. 608 of 2016 in I.A.No. 285 of 2011 in O.S.No. 1192 of 2005 dated 02.02.2017 so as to enable the Petitioners/Defendants to contest the suit which was dismissed for default on 30.11.2011.

For Petitioner : Mr.G.Thangavel

ORDER

The petitioner has preferred this Civil Revision Petition against dismissal of the petition filed to condone the delay of 1286 days in restoring the petition to set aside the *exparte* decree.

2. Admittedly, *exparte* decree was passed against the

petitioners/defendants in O.S.No. 1192 of 2005 dated 13.12.2010. Immediately, they have filed a petition to set aside the *exparte* decree under Order IX Rule 13 of C.P.C. It was allowed on terms. However, instead of complying with the conditions imposed by the Trial Court, the petitioners have allowed the matter dismissed for default. Thereafter, vague averments are made that they met with an accident and they had been to Rajasthan. There are two petitioners and the 2nd petitioner is said to have met with an accident and thereafter, he moved to Rajasthan. There is no specific details about the nature of accident, medical treatment and as to when he became alright. Further, there is no specific averment that as to when he went to Rajasthan and when he came back to puducherry. That apart, there is no whisper about the first petitioner, who is the father of the second petitioner, who was very much available in Puducherry and not taking any steps for complying with the conditional order or to file a petition in time.

3. The petitioners have also filed a petition under Section 151 of the Civil Procedure Code, to restore the petition to set aside the *exparte* decree. In fact, the *exparte* decree was set-aside, but what remains is only the compliance of the condition of payment of Rs.500/- as cost to the other side. Proper application has not been filed and

averments does not disclose any sufficient reason for condoning the delay. The first petitioner said to have been residing in very same property and has not shown any reason for not taking any steps in this matter. The second petitioner even though has given vague reasons, it is not supported by any of the documentary evidence to substantiate his statements. Both the petitioners have deliberately remained absent and have failed to take steps as expected from a vigilant litigant. The reasons adduced by the petitioners does not disclose that it was sufficient to condone the day. The only reason stated by the first petitioner is not taking any steps is that he is aged about 80 years. When there are several ways to prosecute the case and to protect the title, the petitioners were very lethargic and have been in very deep slumber. In the absence of sufficient reasons, the delay cannot be condoned. Therefore, the order dated 02.02.2017 passed by the Trial Court in I.A.No. 608 of 2016 in I.A.No. 285 of 2011 in O.S.No. 1192 of 2005 does not warrant any interference and the Civil Revision Petition deserves to be dismissed.

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4. Accordingly, with above observations, this Civil Revision

Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

13.09.2017

Index :Yes/No
Internet : Yes/No
bsm/tk

To

The Principal District Munsif
Puducherry



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M.GOVINDARAJ., J.

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