IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3510 of 2014
& M.P.No.1 of 2014
& C.M.P.No.11382 of 2016

1.Victor Samuel
2.Selvamani
3.Epsy .. Petitioners

Vs.

Murugesan .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.07.2011, made in I.A.No.728 of 2010 in O.S.No.133 of 1983, on the file of the Hon'ble Principal District Munsif Court, Poonnamallee.

For Petitioners : Mr.V.Lakshminarayanan

For Respondent : Mr.B.R.Sankaralingam

O R D E R

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This Civil Revision Petition has been filed against the fair and decretal order dated 19.07.2011, made in I.A.No.728 of 2010 in O.S.No.133 of 1983, on the file of the Hon'ble Principal District Munsif Court, Poonnamallee.

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2.The petitioners are the defendants 8 to 10 and respondent is the plaintiff in O.S.No.133 of 1983. The respondent along with one Sundaraj, filed the said suit against the petitioners and others for partition and passing of final decree. First defendant filed written statement on 27.07.1983 and was contesting the suit. The petitioners were impleaded as legal heirs of the deceased first defendant Peter Swamidoss. The petitioners did not contest the suit. They were set exparte and exparte preliminary decree was passed on 12.06.2008. The petitioner filed I.A.No.728 of 2010 to condone the delay of 724 days in filing the petition to set aside the exparte preliminary decree. According to the first petitioner, he was conducting the case on behalf of other petitioners also. The petitioners have stated that their Advocate did not inform about the stage of the suit and therefore they could not contest the matter. Only when they received notice in the application in I.A.No.203 of 2010, filed by the respondent for passing of final decree, they came to know about the exparte preliminary decree and immediately they filed the application to set aside exparte preliminary decree with the present petition.

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3.The respondent filed counter affidavit and submitted that the suit is of the year 1983. The petitioners did not contest the suit. Now, it is not open to them to blame the erstwhile Advocate and come out with the present application to set aside the exparte decree. This application is filed only to drag on the proceedings. The respondent is senior citizen and aged more than 70 years.

4.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application on the ground that petitioners have not given any valid reason for condoning the delay.

5.Against that order 19.07.2011, made in I.A.No.728 of 2010 in O.S.No.133 of 1983, the present Civil Revision Petition is filed by the petitioners.

सत्यमेव जयते

6.Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

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7.The petitioners have come out with the present application to condone the delay on the ground that their erstwhile

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counsel did not inform them about the stage of the suit and exparte preliminary decree. It is well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In the present case, the petitioners have given reason for the delay. The learned counsel for the petitioners submitted that the petitioners are ready to compensate the respondent and will pay a sum of Rs.5000/- to the respondent.

8.In the circumstances, the Civil Revision Petition is allowed. The I.A.No.728 of 2010 is allowed on condition that petitioners pay a sum of Rs.5,000/- to the respondent within a period of 2 weeks from the date of receipt of a copy of this order and file a proof of the payment before the Principal District Munsif Court, Poonnamallee. On filing the said proof, the Principal District Munsif is directed to dispose the application filed to set aside the exparte preliminary decree and proceed further. The suit is of the year 1993. The learned counsel for the respondent submitted that

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he will say no objection in the application to set aside the exparte preliminary decree and he prayed for speedy disposal of the suit. The learned Judge is directed to dispose the suit within a period of 3 months from the date of the order passed in the application to set aside the preliminary decree.

9.In the result, this Civil Revision petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.11.2017

Index: Yes/No
gsa

To

The Principal District Munsif,
Poonnamallee.

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V.M.VELUMANI,J.

gsa

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