IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.4155 of 2012
M.P.No.1 of 2012

1.Oorvasi
2.Samaladevi
3.Rajasekar
4.Anusuya .. Petitioners

Vs.

E.Thangaraj .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order of the learned Subordinate Judge, Bhavani dated 30.04.2012 made in E.A.No.103 of 2011 E.P.No.109 of 2007 in O.S.No.406 of 2986.

For Petitioners : Mr.Mr.S.Saravana Kumar
for Mr.R.Subramanian

For Respondent : Mr.Ma.P.Thangavel

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ORDER

This Civil Revision Petition has been filed against the fair and decretal order of the learned Subordinate Judge, Bhavani dated 30.04.2012 made in E.A.No.103 of 2011 E.P.No.109 of 2007 in

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O.S.No.406 of 1986.

2. The respondent herein is the decree holder and petitioners are the defendants 4 to 7 in O.S.No.406 of 1986 on the file of the Subordinate Court, Erode, for specific performance of agreement of sale dated 16.09.1986. The respondent filed E.P.No.109 of 2007 to execute the decree. On the date of hearing, (i.e.,) on 21.11.2010, the petitioners did not appear and they were set exparte. The petitioners filed R.E.A.No.103 of 2011 under Order 21 Rule 106 and Section 151 C.P.C to set aside the exparte order. According to the petitioners, the second petitioner was handling the case. He was suffering from jaundice and was taking rest for two weeks and therefore, she could not meet the Advocate to give instructions to file counter. After recovering from illness, the petitioners came to know about the exparte order passed in the E.P and filed the present application to set aside the exparte order. The petitioners also were under the impression that the orders in E.P would be passed only after disposal of E.A.No.6 of 2009 filed by the petitioners under Section 28 (1) of the Specific Relief Act read with Section 47 of C.P.C. The said E.A was dismissed on 14.09.2011 after full enquiry. The petitioners are making arrangements to file

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Civil Revision Petition and prayed for condoning the delay in filing the petition to set aside the exparte order passed in E.P.

3. The respondent filed counter affidavit and denied the said contention. The learned Judge, considering all the averments in the affidavit, counter affidavit, materials on record, took note of the fact that the C.R.P.No.5121 of 2011 filed by the petitioners against the order dated 14.09.2011 made in E.A.No.6 of 2009 was dismissed by this court on 11.02.2012 and considering the fact that the reason given by the petitioners for condoning the delay in filing the petition to set aside the exparte order in E.P, dismissed the R.E.A.No.103 of 2011 filed by the petitioners, holding that the reasons given by the petitioners are not a valid reason.

4. Against the said order dated 30.04.2012 made in E.A.No.103 of 2011 in E.P.No.109 of 2007 in O.S.No.406 of 1986, the present Civil Revision Petition is filed by the petitioners.

5. Heard the learned counsel appearing for the petitioners and respondent and perused the materials available on record.

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6. The petitioners have stated that the second petitioner was handling the case and he was suffering from jaundice and could not contact their Advocate. From the materials available on record, it is seen that the petitioners have not given any particulars as to when the second petitioner became ill and when she recovered from illness and when she contacted their Advocate. The E.A.No.6 of 2009 filed by the petitioners was dismissed on 14.09.2011. This Court, dismissed the C.R.P.No.5121 of 2011 on 11.02.2012 filed by the petitioners challenging the said order. Considering all the above facts and the reason given by the petitioners for setting aside the exparte order, I find there is no infirmity or illegality warranting interference with the order of the learned Trial Judge dated 30.04.2012.

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

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To

The Subordinate Judge,
Bhavani

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V.M.VELUMANI,J.

gsa

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