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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 09.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.22 of 2017

and

C.M.P (MD) No.81 of 2017

1.P.Nagarajan

2.N.Tamilarasi

.. Petitioners/Respondents/Plaintiffs

-vs-

P.C.Rajendran

.. Respondent/Petitioner/1st Defendant

PRAYER:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the docket order, dated 08.12.2016 passed in I.A.No.102 of 2016 in O.S.No.122 of 2007 on the file of the Sub Court, Usilampatti, Madurai District.

For Petitioner

: Mr.B.Prahalad Ravi

ORDER

The petitioner has filed the above Civil Revision Petition against the docket order, dated 08.12.2016 passed in I.A.No.102 of 2016 in O.S.No.122 of 2007 on the file of the Sub Court, Usilampatti, Madurai District.

2.The petitioners are the plaintiffs in the suit in O.S.No.122 of 2007 on the file of the Sub Court, Usilampatti and the respondent is the first defendant in the said suit. The respondent and the second defendant were set ex-parte on 19.12.2012 for non-filing of written statement. The respondent along with the second defendant have filed an application in I.A.No.102 of 2016 to set aside the ex-parte order along with the written statement and to condone the delay of 816 days in representing the petition. According to the respondent, the said petition was returned for certain compliance. The returned bundle was misplaced and therefore, could not be represented in time. They represented the same along with the petition to condone the delay in representation. The petitioners opposed the same on the ground that they have not given any valid reason in representing the same. The second defendant also died on 12.09.2014 ie., before numbering the application and without impleading the legal heirs of the deceased-second defendant, the application is not maintainable. The respondent has to file a separate application to set aside the ex-parte order and prayed for dismissal of the application.



3.The learned Judge, considering the averments and materials available on record, the stage in which the suit is pending, allowed the application on condition that the respondent pays a sum of Rs.500/- as cost to the petitioners. Against the said order, the present Civil Revision Petition has been filed.

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4.The learned counsel appearing for the petitioners reiterated the averments made in the counter-affidavit filed by them in the application for condonation of delay in representation and further submitted that the respondent has not given any reason for condonation of delay in representation and prayed for allowing the Civil Revision Petition.

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

6.The respondent has filed an application to condone the delay of 816 days in representing the application to set aside the ex-parte order. Since the suit is pending trial, the application filed by the respondent to condone the delay of 816 days in representing to set aside the ex-parte order is allowed on payment of costs, which is impugned in the Civil Revision Petition. The learned Judge has considered all the aspects in proper perspective and exercised his jurisdiction properly and allowed the application. There is no error or irregularity in the order passed by the Sub Court, Usilampatti, Madurai District, warranting interference of this Court. Hence, this Civil Revision Petition is liable to be dismissed.

7.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Usilampatti,
Madurai District.

+1 cc to Mr.B.Prahalad Ravi, Advocate, SR.No.1908

Ps

AES/RR-ME/SAR2/27.01.2017/2p/3c

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