



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.333 of 2017 (NPD)
& C.M.P.(MD)No.1664 of 2017

1.Renugadevi, W/o.Late. Shethuram

2.S.Shantharam

3.S.Rajkumar

.. Petitioners

Vs.

E.Chakravarthi

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 30.11.2016, passed in I.A.No.20 of 2016 in T.O.P.No.2 of 2012 by the learned Principal Subordinate Judge, Dindigul.

For Petitioners : Mr.A.Arul Jenifer

ORDER

This Civil Revision Petition is filed against the order dated 30.11.2016, passed in I.A.No.20 of 2016 in T.O.P.No.2 of 2012 by the learned Principal Subordinate Judge, Dindigul.

2. The petitioners filed T.O.P.No.2 of 2012 seeking a direction to the respondent to receive a sum of Rs.8,00,000/- and cancel the mortgage executed by the petitioners. The said T.O.P. was dismissed for default on 12.08.2014. The petitioners filed an application to set aside the order of dismissal. The said application was returned. The petitioners did not re-present the same within the time granted by the Court. The petitioners re-presented the same along with present I.A.No.20 of 2016 to condone the delay of 498 days in re-presenting the application. According to the petitioners, the said application was mixed up with other bundles in their Advocate's office and due to his illness, he could not contact his Advocate and prayed for condoning the delay in re-representation.

3. The respondent filed counter affidavit and submitted that the reason given by the petitioners is contrary to the facts. The respondent has filed O.S.No.61 of 2014 before the Principal District Court, Dindigul, for recovery of money due under the said mortgage. The petitioners entered appearance and after taking number of adjournments, filed written statement. Trial commenced. The respondent let in evidence and filed proof affidavit and the



suit was posted for cross-examination of P.W.1. At that stage, the petitioners filed T.O.P. with false averments, as the petitioners were appearing in the suit filed by the respondent.

4. The learned Principal Subordinate Judge, Dindigul, considering the averments made in the affidavit, counter affidavit and also considering the materials available on record, dismissed the application.

5. Against the said order of dismissal, dated 30.11.2016, the petitioners have come out with the present Civil Revision Petition.

6. I have heard the learned counsel for the petitioners and perused the materials available on record.

7. The petitioners have filed I.A.No.20 of 2016 to condone the delay of 498 days in re-presenting the application to set aside the order dismissing the T.O.P. for default. According to the petitioners, after return by the learned Principal Subordinate Judge, Dindigul, the bundle got mixed up with other bundles in the Office of the Advocate. Subsequently, due to his illness, he could not contact his Advocate. On the other hand, the respondent in the counter affidavit, has stated that the petitioners are contesting the suit in O.S.No.61 of 2014 filed by the respondent for recovery of money and the petitioners did not comply with the conditional order passed by the Court. This averment is not denied by the petitioners. The petitioners have not substantiated their contention that due to their illness only, they could not contact their Advocate. They have not furnished any detail as to when they became ill, nature of the treatment taken by them and when they recovered from illness. The petitioners made vague averments in the affidavit for the delay in re-presenting the petition. The petitioners have not given sufficient reason to condone the delay. It is well settled that the length of delay is not the criteria and the reason given for condonation of delay must be bona fide and sufficient to condone the delay. In the present case, the petitioners have not given valid and sufficient reason to condone the delay. In the circumstances, the learned Principal Subordinate Judge, Dindigul, has rightly considered these facts and dismissed the application. There is no irregularity or illegality in said the order warranting interference by this Court.

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

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/>

To

The Principal Subordinate Judge,



Dindigul.

Smn2

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