



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2017

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P (PD) (MD) No. 427 of 2017

and

C.M.P (MD) No. 2121 of 2017

1. Jeyakala

2. Glory

3. Shyla

4. Chandra Bose

: Petitioners/ Petitioners/Appellants

vs.

Roselet

: Respondent

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the order and decretal order dated 14.11.2016 passed in I.A.482 of 2014 in A.S.(SR)No.726 of 2014 on the file of Sub Court, Kuzhithurai.

For Petitioners : Ms. J. Anandhavalli

For Respondent : No appearance

O R D E R

This revision petition is directed against the dismissal of the interlocutory application filed under section 5 of the Limitation Act to condone the delay of 641 days in preferring first appeal.

2. The case of the Revision Petitioners is that a specific performance suit was filed by the respondent herein against their father Late Rajamony. After filing written statement, their father could not attend the Court and later died pending suit. Therefore, the Revision Petitioners were brought on record as legal representatives of the deceased sole defendant. Thereafter there was a communication gap between them and the counsel who was conducting the suit and they were not aware of the progress in the suit filed against them. This has led to a decree to be passed against them on 25.08.2012.

3. After coming to know about the decree passed against them, they have preferred appeal with the delay 641 days. Though they have properly explained the cause for the delay, the Appellate Court was not satisfied with the reason and dismissed the same, hence, seek for intervention of this Court under revisional jurisdiction.

4. Notice was ordered to the respondent and the petitioners were also permitted to take private notice. The respondent has



received the notice on 20.03.2017.

5. When the matter was posted today neither the respondent nor her representatives were present.

6. Perusal of the impugned order indicates that the Appellate Court was not convinced by the reasons stated by the Revision petitioner for condonation of delay. The Appellate Court has accepted the contention of the respondent that when the case was posted for trial, the counsel for the revision petitioners cross-examined PW1 and therefore, it cannot be construed that there was a communication gap between the revision petitioners and their counsel. However, on perusing the judgment passed in the suit, it appears that three witnesses were examined on behalf of the plaintiff and four documents were marked. No witness was examined and no document was filed on behalf of the defendant.

7. The Trial Court based on the evidence adduced by the plaintiff, has allowed the suit. The suit is for the relief of specific performance. The person who has entered into the alleged agreement with the respondent is dead and only his legal representatives are now before this Court. Therefore, this Court is of the opinion that a fair opportunity should be given to the revision petitioners to defend their case. Since they have now preferred appeal, with the delay of 641 days, the impugned order of the Appellate Court ought to be set aside, to provide an opportunity to the defendants to contest the matter.

8. Accordingly, the Civil Revision Petition is allowed and the order dated 14.11.2016 passed in I.A.482 of 2014 in A.S.(SR)No.726 of 2014 is set aside. The delay of 641 days in preferring appeal shall stand condoned on payment cost of Rs.5000/- by the revision petitioners to the respondent. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Sub Judge, Kuzhithurai.

2. The Section Officer, V.R Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.J.ANANDHAVALLI, Advocate, SR No. 50065

NBI

PSM/JC/SAR3/11.05.2017/2P/4C

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