



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 20.03.2017  
CORAM

THE HONOURABLE DR.JUSTICE **G. JAYACHANDRAN**

WEB COPY

C.R.P(PD) (MD) Nos.587 & 588 of 2017  
and  
C.M.P(MD) Nos.2615 & 2616 of 2017

1.B.Vasu  
2.Muniyammal

.. Petitioners in both CRPs

vs.

Sathiyavathi (Died)  
1.Sethuraman  
2.Ganeshan  
3.Venkatraman  
4.V.Vinoth

.. Respondents in both CRPs

Prayer in both CRPs : Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 25.10.2016, 28.09.2016 made in I.A.Nos.125 & 112 of 2016 in O.S.No.26 of 2012 on the file of the Additional District Court cum Fast Tract Court, Kumbakonam.

For Petitioner : Mr.R.Prakash

**COMMON ORDER**

The revision petitioners are defendants 1 and 2 in O.S.No.26/2012.

2.In I.A.No.125/16 filed for extension of time to pay cost of Rs.500/- as per the order passed in I.A.No.112/16 (recall petition). The Trial Court has rejected the said application filed under Section 148 CPC. Aggrieved by that, CRP.587/17 is preferred.

3.For non payment of cost within the time stipulated i.e., 03.10.2016, I.A.No.112/16 was also dismissed, against which, the revision petitioners have preferred CRP.588/17.

4.Heard the learned counsel for the revision petitioners.

5.From the records, it appears that the revision petitioners are defendants 1 and 2 in the suit filed for specific performance, in which, the defendants have taken out I.A.No.112/16 to re-open their side evidence and to summon the Tahsildar as a witness on their side.



6.The Trial Court was pleased to allow this application on 28.09.2016, on condition that the defendants shall pay cost of Rs.500/- to the plaintiffs 2 to 4 on or before 03.10.2016 and when the matter was called on 04.10.2016, there was no representation on behalf of the defendants and there was no material placed before the Trial Court regarding payment of cost. Hence, the Trial Court has dismissed I.A.No.125/16 filed under Section 148 CPC for extension of time for payment of cost, on the ground that once the order is passed, the Court becomes functus officio and has no power to extend the time.

7.The learned counsel appearing for the revision petitioners pointing out the above error in the Trial Court order, submitted that non payment of cost was not deliberate or wilful, but due to the illness of the counsel. Therefore, the Trial Court ought to have allowed the application for extension of time and should have restored I.A.No.112/16 and permitted the revision petitioner to pay battha for the witness.

8.This Court finds force in the submission made by the learned counsel for the revision petitioners. To avoid further delay, this Court set aside the order passed by the Trial Court in I.A.No.125/16. Time for payment of cost is extended till 30.03.2017. Since there is a further delay, this Court deems it appropriate that the revision petitioners should pay Rs.1,000/- in addition to the cost imposed by the Trial Court to the plaintiffs 2 to 4. On such payment, I.A.No.112/16 may be restored on file and Trial Court shall proceed further.

With the above direction, the Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

Additional District Court cum  
Fast Track Court,  
Kumbakonam.

+2. CC to M/S.R.PRAKASH, Advocate SR.No.15972

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