

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3634 of 2011 and
M.P.No.1 of 2011

1.Noorjahan
2.Jageer Hussain

.. Petitioners

Vs.

1.Sirajudeen
2.Ammaniammal
3.M.Thangavel

(Respondents 2 and 3 herein have
remained exparte before the
trial Court)

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 20.06.2011 made in I.A.No.1979 of 2009 in A.S.CFR.No.25982 of 2009 on the file of the Principal District Court, Coimbatore.

For Petitioners : Mr.D.Shivakumaran

For R1 : Mr.C.Veeraraghavan

R2 and R3 : Given up

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 20.06.2011 made in I.A.No.1979 of 2009 in A.S.CFR.No.25982 of 2009 on the file of the Principal District Court, Coimbatore.

2. The petitioners are defendants 1 and 2, first respondent is plaintiff and respondents 2 & 3 are the defendants 3 and 4 in O.S.No.63 of 2000 on the file of the Subordinate Court, Udumalpet. The first respondent filed the said suit for specific performance of agreement of sale. The suit was decreed on 21.02.2006. The petitioners filed appeal along with present I.A.No.1979 of 2009 to condone the delay of 1274 days in filing the appeal.

3. According to the petitioners, due to financial problem, they could not file the appeal in time. The delay is neither wilful nor wanton.

4. The first respondent filed counter affidavit and denied the averments made in the application and contended that the petitioners could have filed a petition under Section 149 C.P.C. for payment of Court fee.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the petitioners have not given any acceptable reason for condoning the delay and the petitioners could have filed the appeal as pauper.

6. Against the said order of dismissal dated 20.06.2011 made in I.A.No.1979 of 2009 in A.S.CFR.No.25982 of 2009, the present Civil Revision Petition is filed by the petitioners.

7. The learned counsel for the petitioners submitted that the petitioners due to financial problem, could not arrange the amount for payment of Court fee immediately and they filed the application with the delay. The application may be allowed on terms and the petitioners are ready to pay a sum of Rs.10,000/- as costs.

8. The learned counsel for the first respondent submitted that the petitioners have not given any reason for condoning the huge delay.

9. Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record.

10. From the materials available on record, it is seen that the suit filed by the first respondent is for specific performance of agreement of sale. The petitioners, after passing of judgment and decree in the suit, filed the appeal with an application to condone the delay in filing appeal on the ground that they did not have money at the time of payment of Court fee to file appeal immediately. The learned Judge rejected the said reason given by the petitioners and has held that the petitioners could have filed appeal as pauper. The reasoning of the learned Judge is not valid. A person not having sufficient money to pay the Court fee within the time limit is different person being a pauper person as defined in C.P.C.

11. Considering the fact that the suit is for specific performance of the agreement of sale and the petitioners have now

paid Court fee for filing appeal, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. At the same time, in view of the contention of the learned counsel for the petitioners that the Civil Revision Petition may be allowed on terms, the petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten thousand only) to the counsel appearing for the first respondent within a period of two weeks from the date of receipt of a copy of this order. On production of such receipt, the learned Judge is directed to number the appeal, if it is otherwise in order and dispose of the appeal within a period of four months thereafter.

12. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.02.2018

Index:Yes/No

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To

The Principal District Judge, Coimbatore.

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V.M.VELUMANI,J.

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