

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3875 of 2015
& M.P.No.1 of 2015

1.R.Devaraj
2.Parvathi
3.D.Govindaraj
4.D.Kamalakaran
5.D.Jayabal
6.D.Chandramohan

.. Petitioners

Vs.

R.Rukmani (Died)
1.K.Rajeswari
2.R.Thangamani

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and decretal order dated 28.01.2015 made in I.A.No.948 of 2013 in A.S.CFR.No.12476 of 2013 on the file of the Principal District Judge, Coimbatore.

For Petitioners : Mr.J.R.K.Bhavanantham

For Respondents : Mr.Mukunth
for M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 28.01.2015 made in I.A.No.948 of 2013 in

A.S.CFR.No.12476 of 2013 on the file of the Principal District Judge, Coimbatore.

2.The petitioners are defendants and respondents are plaintiffs in O.S.No.1444 of 2001 on the file of the Principal District Judge, Coimbatore. The respondents along with their mother, R.Rukmani filed the said suit for partition, claiming $\frac{1}{2}$ share in the suit property and for mesne profits at the rate of Rs.2,000/- per month from the date of suit till delivery of possession to the respondents and their mother. A preliminary decree was passed on 05.06.2006. The petitioners filed appeal, challenging the said judgment and decree dated 05.06.2006, along with I.A.No.948 of 2013 to condone the delay of 2542 days in filing the said appeal. According to the petitioners, their Advocate did not inform about the preliminary decree and did not apply for copy of the judgment and decree. Only when they contacted their Advocate in the year 2008, they were informed about the preliminary decree. Immediately, the petitioners applied for judgment and decree and filed appeal through the said Advocate P.R.Shanmugam. According to the petitioners, their Advocate P.R.Shanmugam was suffering from severe illness and could not file copy application and conduct their case properly. The staff in his office did not allow the petitioners to

meet the Advocate P.R.Shanmugam. Subsequently, the said Advocate was giving dates of hearing upto June 2013. Only when they requested their Advocate P.R.Shanmugam to file petition for stay of passing of final decree, they were informed that the appeal filed by them was returned and the same was not re-presented. Immediately, they contacted another Advocate and filed the present appeal with condonation of delay. The delay occurred due to the above reasons and it is not due to the wilful negligence on the part of the petitioners and prayed for condoning the delay in filing the application.

3.The respondents along with their mother filed counter affidavit denying all the averments made by the petitioners. According to the respondents, Advocate P.R.Shanmugam was not suffering from illness. On the other hand, he was conducting the Arbitration proceedings and was very much available to conduct the case. The petitioners are educated and the second petitioner is working in the Police Department and reasons given are not valid reason and prayed for dismissal of the application.

4.Before the learned Judge, on behalf of the petitioners, first petitioner examined himself as P.W.1 and marked 5 documents as Exs.P1 to P5.

5.The learned Judge, considering the averments in the affidavit, counter affidavit and the oral and documentary evidence of P.W.1, dismissed the application.

6.Against the said order of dismissal dated 28.01.2015 made in I.A.No.948 of 2013 in A.S.CFR.No.12476 of 2013, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel for the petitioners contended that the delay is due to their Advocate and his Office and petitioners should not suffer for the in-action of their Advocate. The petitioners filed appeal in the year 2008 with condonation of delay of 787 days. The said appeal was returned by the Court and their Advocate did not inform the same to the petitioners. Again in the year 2013, they filed present appeal with application to condone the delay of 2542 days. They filed appeal immediately after receipt of notice in the application filed by the respondents for final decree. The learned counsel for the petitioners filed additional typed set of papers and referred to news item against him, wherein action taken against their Advocate, P.R.Shanmugam for conducting illegal Arbitration proceedings. The learned counsel for the petitioners also prayed for allowing the Civil Revision Petition on terms.

8.The learned counsel for the respondents reiterated the averments in the counter affidavit and made submissions on merits and contended that the petitioners were not diligent enough to prosecute the case. They are squatting on the property. In the final decree application, the Advocate Commissioner was appointed and he inspected the property and submitted the report into Court.

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

10.From the impugned order of the learned Judge, it is seen that the petitioners have filed appeal in the year 2008 with an application to condone the delay of 787 days in filing the appeal. The said appeal was returned and the same was taken by their Advocate and subsequently, it was not re-presented by their Advocate. The petitioners have filed the fresh appeal again along with I.A.No.948 of 2013 to condone the delay of 2542 days. From this facts, it is seen that the contention of the learned counsel for the petitioners that it is their Advocate P.R.Shanmugam, who did not conduct the case properly and petitioners should not suffer for the mistake of the Advocate has considerable force.

11.It is well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In the present case, after receipt of notice in the final decree in the year 2013, the petitioners have filed present appeal along with application to condone the delay. Considering all the above facts, I hold that the impugned order of the learned Judge dated 28.01.2015 made in I.A.No.948 of 2013 in A.S.CFR.No.12476 of 2013 is liable to be set aside and at the same time, the petitioners must be directed to pay the cost for the delay.

12.Accordingly, the order of the learned Judge dated 28.01.2015 made in I.A.No.948 of 2013 in A.S.CFR.No.12476 of 2013 is set aside and the Civil Revision Petition is allowed, directing the petitioners to pay a sum of Rs.5,000/- (Five thousand Rupees only) to the **"St.Louis Institute for Deaf & Blind", No.25, Canal Bank Road, Gandhi Nagar, Adyar, Chennai – 600 020. [Near Old Cancer Hospital & Kotturpuram Railway Station], Phone Nos: 044-**

24910886, 24421315, within a period of two (2) weeks from the date of receipt of a copy of this order. On production of receipt for payment of the said cost, the learned Principal District Judge, Coimbatore is directed to number the appeal, if it is otherwise in order and dispose of the same within a period of four (4) months there after.

13. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.02.2018

Index :: Yes/No
Speaking order/Non-Speaking order

gsa

To

The Principal District Munsif,
Coimbatore.

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V.M.VELUMANI,J.

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