

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P. (PD) No.2510 of 2018

and

CMP. No.15287 of 2018

1. Annadurai

2. Settu

...Petitioners

Vs

Rajagopal

...Respondent

PRAYER:Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order passed in I.A.No.182 of 2018 in O.S.No.181 of 2017 dated 10.07.2018 passed by the learned Subordinate Judge, Jayankondam, Ariyalur.

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For Petitioners : Mr.N.Nanmaran

For Respondent : Mr.G.Pugazhenth

ORDER

The petitioners are the defendants in the suit in O.S.No.181 of 2017 filed for the relief of recovery of money. In the said suit, an application in I.A.No.225 of 2015 (re-numbered as I.A.No.10 of 2017) was filed by the petitioners under Section 45 of the Indian Evidence Act. On 20.07.2017, the said application in I.A.No.10 of 2017 was dismissed for default. When the petitioners have filed an application to restore the said application, the same came to be allowed on payment of cost of Rs.500/-. Subsequently, when the petitioners did not pay the cost of Rs.500/-, their application to restore was also dismissed. Hence, the petitioners filed an application in I.A.No.182 of 2018 to restore the earlier application in I.A.No.10 of 2017 and even this application was dismissed on 10.07.2018. Challenging the same, the present revision has been filed.

2. It is the submission of the learned counsel for the petitioners that the 2nd petitioner has a valid defence in the suit and he has also assigned the reason in his application before the trial Court that he had been suffering from Jaundice from 04.04.2018 onwards, which aspect has not been considered by the trial Court.

3. On an overall perusal of the order passed by the trial Court, I do not find infirmity. As such, the trial Court has taken into consideration the various stages in which the petitioners have been careless in approaching the Courts and has therefore, come to the conclusion that the petitioners have been dragging the proceedings unnecessarily.

4. Nevertheless, it is the submission of the learned counsel for the petitioners that the reasoning given by the 2nd petitioner that he was suffering from Jaundice was not properly appreciated by the trial Court. I do not wish to go into the merits of such a claim before the trial Court. However, taking into account that the trial Court had earlier chosen to restore the application in I.A.No.10 of 2017 by payment of cost, the same benefit could be extended to the petitioners by taking a lenient view and by imposing further costs.

5. In the light of the above observations, the order of the trial Court passed in I.A.No.182 of 2018 in O.S.No.181 of 2017 dated 10.07.2018 is set aside. Consequently, the application in I.A.No.10 of 2017 in O.S.No.181 of 2017 on the file of the learned Subordinate Judge, Jayankondam, Ariyalur is restored.

6. The petitioners shall also pay the respondent a sum of Rs.5,000/- by way of costs and file such memo of payment made, before the trial Court within a period of two weeks from the date of receipt of copy of this order.

7. Accordingly, the civil revision petition stands ordered. Consequently, connected miscellaneous petition is closed.

23.11.2018

Index:Yes/No

Speaking order: Yes/No

hvk

To

The Sub Court,
Jayankondam,
Ariyalur.

सत्यमेव जयते

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M.S.RAMESH.,J

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