

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.882 of 2018

and

CMP.No.4841 of 2018

1.Jayachandran

2.Tmt.Padmapriya

.. Petitioners

Vs.

1.K.Jayasree

2.Minor K.Chandra Bomi

3.Minor K.Chandra Lakshmi

(Respondents 2 & 3/plaintiffs 2 &
3 minors Rep. by Mother and
Mutual guardian next friend
K.Jayasree

4.V.B.Kamalanathan

(4th respondent given up in this Revision) .. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order and decretal order dated 03.01.2018 made in I.A.No.17208 of 2017 in O.S.No.6178 of 2013 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.A.S.Narasimhan

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ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 03.01.2018 made in I.A.No.17208 of 2017 in O.S.No.6178 of 2013 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

2.The petitioner has filed a suit in O.S.No.6178 of 2013 under Order 7 Rule 11 of the Code of Civil Procedure, for declaration to declare two settlement deed Nos.2060/11 and 2061/11 dated 13.06.2011 exhibited by the 4th respondent in favour of the first petitioner as null and void and for partition. The first respondent filed written statement in the month of November 2017. An ex-parte order was passed on 31.10.2017. According to the petitioner, an Interlocutory Application in I.A.No.17208 of 2017 has been filed under Order 9 Rule 7 of the Code of Civil Procedure, to set aside the ex-parte order passed on 31.10.2017. The Trial Court considering the contentions of the petitioner that they were busy with the other business and hence, could not filed the written statement, gave an opportunity to the petitioners to contest the case on merits and allowed the said application on condition that each of the petitioners pays a sum of Rs.1500/- as costs to the Madras High Court,

Hon'ble Chief Justice Relief Fund, on or before 12.02.2018. Challenging the aforesaid order dated 03.01.2018 made in I.A.No.17208 of 2017 in O.S.No.6178 of 2013, the petitioners have come out with the present Civil Revision Petition before this Court.

3.On a perusal of the reasons stated in the order as well as the grounds raised by the revision petitioners and the submission of the counsel for the petitioners that when the aforesaid suit is posted on 30.10.2017, the petitioners appeared and filed their written statement and therefore, the Court below had correctly imposed cost. It is an admitted fact that the petitioners have received the summons in the year 2013. Thereafter, the first petitioner/first defendant has filed the written statement along with an application to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure.

4.In the light of the above, the case has been adjourned from the year 2013, for filing written statement. The petitioners have not chosen to file the written statement for all the aforesaid period. Therefore, the ex-parte order is passed and the present application has been filed to set aside the above said order. In view of the said fact, there is a delay in

filing. Hence, the order of the Court below is sustainable and the same is confirmed and accordingly, the Civil Revision Petition is liable to be dismissed. At this stage, the learned counsel appearing for the petitioner seeks time to comply with the conditional order passed by the Court below.

5. This Civil Revision Petition is dismissed with a direction that the petitioners are permitted to comply with the order passed by the Court below and the cost imposed by the Court below should be paid within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

19.03.2018

Speaking/Non-Speaking order

Index : Yes/No

Internet: Yes/No

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To

The XVIII Assistant Judge,
City Civil Court, Chennai.

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D. KRISHNAKUMAR J.,

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