

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.1466 of 2016
and
CMP. No.8052 of 2016

1.Kalarani
2.Dhanasekari
3.Murali
4.D.Rameswari
5.Mangalam

.. Petitioners

Vs

D.Jeyavel

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.17063 of 2011 in O.S. No.4383 of 2007 dated 11.01.2016 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Petitioners :Mr.A.Kumanaraja

For Respondent :Mr.T.G.Balachandran

ORDER

This Civil Revision Petition is filed against the dismissal order dated 11.01.2016 passed by the learned VIII Assistant Judge, City Civil Court, Chennai in I.A.No.17063 of 2011 in O.S. No.4383 of 2007.

2. The learned counsel for the petitioners would submit that the petitioner have filed the suit in O.S. No.4383 of 2007 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai for declaration and permanent injunction. The respondent has filed a written statement on 15.02.2008 before the Court below. Thereafter, the suit was dismissed for default on 19.09.2008. Hence, the petitioner filed an application in I.A. No.17063 of 2011 before the Court below, to condone the delay of 1088 days in filing the application to restore the suit. The said application was dismissed by the Court below. Challenging the said order, the petitioners have filed the present Civil Revision Petition before this Court.

3. According to the learned counsel for the petitioners, the previous counsel, Mr.Ravi, was entrusted with the case by the petitioners/

plaintiffs. Whenever the petitioners enquire the stage of the case, the previous counsel informed that the case is proceeding, but has not reached the trial stage. The counsel Mr.Ravi, did not inform the date of hearing to the petitioners and therefore the said suit was dismissed for default on 19.09.2008. Subsequently, when the petitioners came to know the fact that the suit was dismissed, immediately, they contacted the present counsel, after getting change of vakalat from the previous lawyer, filed the instant application to restore the suit. The non-appearance of the petitioners is not intentional but only due to the aforesaid bonafide reasons and believing the words of the previous counsel Mr.Ravi. The trial Court has rejected the said application without considering the reasons stated in the affidavit filed by the revision petitioners.

4. The learned counsel for the petitioners further submitted that the revision petitioners have not committed any mistake only the counsel has failed to inform the petitioners about the date of hearing in the suit. The petitioners believing the words of the erstwhile counsel failed to appear before the Court below on the date of hearing. Immediately,

after coming to know the fact that the suit was dismissed for default and the petitioners approached the present counsel and filed the instant application. Only on technical ground, the suit has been dismissed. If the suit is not restored, the right of the petitioners would be deprived. Hence, in the interest of justice, an opportunity may be granted to the petitioners, to decide the suit on merits. Further, allowing the application would not cause any prejudice to the respondent and so prayed to decide the suit on merits, after hearing both the parties.

5. The learned counsel for the respondent would submit that the petitioners have made the aforesaid statement in the affidavit. However, the petitioners being a graduate should be aware of the proceedings and the stage of the case. By considering the said facts and the submissions, the Court below has rightly dismissed the application. Further, it was contended that in the event of the application being allowed, the petitioners shall be compensated by imposing heavy cost, to avoid the same delay tactics, it should not be adopted by the petitioners in future.

6. The fact remains that the instant application filed by the petitioners is to condone the delay in filing the application to restore the suit. The reasons stated in the affidavit by the petitioners, is alleging the erstwhile counsel on record who has not communicated the stage of the case to the petitioners and after coming to know the fact that the suit was dismissed for default the instant application was filed.

7. The present case is concerned, the petitioners being the plaintiff having filed the suit for declaration and permanent injunction, the same shall not be decided without conducting the case on merits. Therefore, the decision of the **Hon'ble Supreme Court** in the case of **Esha Bhattacharjee Vs. Managing committee of Raghunathpur Nafar Academy and others reported in 2013 12 SCC page 649** as follows:

“21.1.(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.3.(iii) Substantial justice being paramount and pivotal the technical

considerations should not be given undue and uncalled for emphasis.

21.9.(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the court are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

8. In the light of the aforesaid directions of the Hon'ble Supreme Court, considering the nature of the suit filed by the petitioners/plaintiffs, this Court is inclined to consider the above said submission and the decision of the Hon'ble Supreme Court, there is no hesitation to set aside the order passed by the Court below in I.A. No.17063 of 2011. However for the inordinate delay in filing this application, the said delay can be condoned only on payment of heavy cost by the petitioners.

9. Therefore, in the light of the above facts and decision cited supra, the order passed in I.A. No.17063 of 2011 is set aside, on condition that the petitioners shall pay a sum of Rs.40,000/- to the respondent and also pay a sum of Rs.10,000/- to the Tamil Nadu Mediation and Conciliation Centre, Chennai within a period of three weeks from the date of receipt of a copy of this order.

10. On compliance of the conditional order passed by this Court, on the instructions based of both the parties that they undertake to co-operate for the disposal of the suit, the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

11. Post on 12.02.2017 for reporting compliance, In case of default in compliance with the above conditional order, the Civil Revision Petition shall stands dismissed.

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Index: Yes/ No

Internet : Yes/No

Speaking Order/Non Speaking Order

RKP

Note: Issue order copy on 22.01.2018

D. KRISHNAKUMAR J.,
RKP

To

The learned VIII Judge,
City Civil Court,
Chennai.



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