

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION.(PD).2712 of 2016
and C.M.P.No.14022 of 2016

1.Thangaraju

2.Kalimuthu

3.Anjalam

4.Sellammal

.. Petitioners

vs

1.Lakshmi

2.Minor Governor
S/o Late Manikam

3/Minor Poovitha
D/o Late Manikam

(Respondents 2 and 3 are
represented by their next
friend mother the
1st respondent)

.. Respondents

The Civil Revision Petition filed under Section 115 of CPC to set aside the fair and final order dated 14.06.2016 passed in I.A.No.764 of 2015 in O.S.No.87 of 2000 on the file of the Sub-Court, Attur.

For Petitioner ... Mr.N.Anand Venkatesh

For Respondents ... Mr.P.Jagadeesan
(for R.1 to R.3)

ORDER

The Civil Revision Petition has been filed to set aside the fair and final order dated 14.06.2016 passed in I.A.No.764 of 2015 in O.S.No.87 of 2000 on the file of the Sub-Court, Attur.

2. According to the petitioners/defendants, the respondents filed a suit in O.S.No.87 of 2000 for declaration and partition against the defendants on the file of the Sub-Court, Attur. The petitioners/defendants have filed the written statement in the aforesaid suit and thereafter, the petitioners were set ex-parte on 11.02.2005 and a preliminary exparte decree was also passed on the same day. Hence, the respondents filed I.A.No.177 of 2006 on 16.02.2006 for passing of final decree. The said application was dismissed for default on 07.08.2009. Subsequently, the respondents filed I.A.No.526 of 2013 seeking relief of passing of final decree and the same was posted on 23.07.2015 for filing counter. The Court below, on 23.07.2015, set the petitioners herein as exparte and appointed an Advocate Commissioner on the very same day for the division of 'A' schedule property. At this stage, the

petitioners/defendants filed an application in I.A.No.764 of 2015 in the aforesaid suit under Section 5 of the Limitation Act to condone the delay of 3867 days in filing an application to set aside the preliminary exparte decree. In the affidavit filed in support of the said application, it is stated that while I.A.No.526 of 2013 was pending, Nallusamy, the first defendant died on 12.02.2014 and thereafter, the learned counsel for the petitioners/defendants, who appeared before the trial Court also died in the year 2015. Hence, the petitioners could not get any information prior to the filing of the present application. After knowing the fact that the preliminary exparte decree was passed against the petitioners, they filed I.A.No.607 of 2015 under Order 9 Rule 7 and Section 151 of CPC. The Court below without considering the facts of the case, erroneously dismissed I.A.No.607 of 2015 and I.A.764 of 2015 by passing separate orders on 14.06.2016. Aggrieved by the order dated 14.06.2016 passed in I.A.No.764 of 2015, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioners submitted that the respondents filed O.S.No.87 of 2000 for declaration and partition against the petitioners and in the said suit, a preliminary exparte decree was passed on 11.02.2005. Hence, the respondents/plaintiffs filed I.A.No.526 of 2013. The Court below, without considering the

case of the petitioners, erroneously dismissed the said application by setting the petitioners exparte. Therefore, the petitioners filed I.A.No.607 of 2015 in I.A.No.526 of 2013 in O.S.No.87 of 2000 to set aside the exparte decree passed in I.A.No.526 of 2013 in O.S.No.87 of 2000 on 23.07.2015 and also filed another application in I.A.No.764 of 2015 to condone the delay of 3687 in filing the application to set aside the exparte decree dated 11.02.2005. Hence, the learned counsel requested this Court to set aside the impugned order dated 14.06.2016 and to give an opportunity to put forth their contention on merits in the above said suit.

4.The learned counsel for the respondents submitted that pursuant to the exparte preliminary decree passed in the said suit, the respondents filed an application in I.A.No.526 of 2013 for passing final decree. In the said application, though notice has been served on the petitioners, they have not appeared before the Court on 23.07.2015. The Court below, appointed the Advocate Commissioner and passed a final decree on the same day. After knowing the aforesaid fact, the petitioners filed the present application in I.A.No.764 of 2015 to condone the delay of 3867 days in filing the application to set aside the exparte decreed dated 11.02.2005 in the aforesaid suit. The Court below, rightly dismissed the said application on the ground that the

petitioners have filed the instant application belatedly and they have not stated sufficient reasons to condone the delay. Hence, the Civil Revision Petition is liable to be dismissed.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

6. On perusal of records, it is seen in the affidavit filed in support of I.A.No.764 of 2016 that the petitioners have not furnished any particulars with proper reasons for the inordinate delay caused in filing the application and therefore, the trial Court, rightly dismissed the application.

7. In the case of ***H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited and another reported in (2015) 1 SCC 680***, the Hon'ble Supreme Court has observed that mere filing of an application for condoning the delay of 1727 days in the matter of re-filing without disclosing reasons, much less satisfactory reasons, only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay.

8. At this stage, the learned counsel appearing for both parties before this Court submit that the matter may be referred to Mediation and Conciliation for amicable settlement. The above said

request may be placed before the Court below, to be referred to the concerned Mediation Centre.

9. Considering the aforesaid fact that the petitioners have not stated any proper reason for the inordinate delay, submissions made by the learned counsel for both sides and in the light of the decision cited supra, this Court is not inclined to entertain the Civil Revision Petition and pass the following Order:

(i) The order dated 14.06.2016 passed in I.A.No.764 of 2015 in O.S.No.87 of 2000 on the file of the Sub-Court, Attur is confirmed.

(ii) The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2018

Speaking/Non Speaking order.

Index: Yes/No.

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To

The Subordinate Judge,
Attur.

D.KRISHNAKUMAR,J.

cla



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and C.M.P.No.14022 of 2016**

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Date: 14.03.2018