

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P. (PD) .No.1461 of 2004 and
C.M.P.No.13684 of 2004

Sri Om Parasakthi Industries
by its Partner G.Palanisamy
2,3,4, Avarampalayam Road,
Peelamedu,
Coimbatore-4.

.... Petitioner/Plaintiff

Vs

1.M/s.Rajkumar Chit Funds (P) Limited
by its Managing Director,
A.M. Vaiyapuri Chettiar,
No.26, Venkataramanna Road,
R.S. Puram,
Coimbatore.

2.C.R. Jagannathan & Proters
by P.R.Palanisamy,
Old No.122, New No.1,
Avarampalayam Road,
Peelamedu,
Coimbatore.

3.Vijayalakshmi

4.Vasanta Krishnan

5.Nirmala

6.Prabavathy

7.Thulasiammal

8.R.Velumani (deceased)

9.The Assistant Commissioner (South),
Commercial Tax Department,
Balasundaram Chettiar Road,
P.N.Palayam,
Coimbatore-18.

10.D.Shanthi

11.S.Ramakrishnan

12.Velusamy

13.Jayashree
14.Karthik

... Respondents

(R13 and R14 brought on record as legal representatives of the deceased 8th respondent viz., R.Velumani, vide order of this Court dated 02.11.2017 made in C.M.P.No.177 of 2015 in C.R.P.No.1461 of 2004)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.03.2004 made in I.A.No.771 of 2002 in O.S.No.1010 of 1992 on the file of the learned III Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.M.Sriram
For Respondents : No appearance for R1

Mr.Sriram
for M/s.A.S. Kailasam and Associates
for R5

No appearance for R2 to R4, R6, R9,
R10 and R12

R7, and R11 - Dismissed vide
Court Order dated 23.09.2011

R8 - Died

Not ready in notice regarding
R13 and R4

ORDER

The above Civil Revision Petition is filed challenging the order dated 25.03.2004 in I.A.No.771 of 2002 in O.S.No.1010 of 1992 filed by the petitioner herein to condone the delay of 2037 days for bringing on record the legal representatives of the 3rd respondent/defendant, who admittedly had died on 02.01.1996.

2.The suit is filed for declaration that the plaintiff is the absolute owner of the suit properties with consequential permanent injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and for declaration that the execution and delivery proceedings in E.A.No.702 of 1992 and EPR No.126 of 1988 in O.S.No.1256 of 1979 is null and void.

3.The affidavit filed in support of I.A.No.771 of 2002 contains only the following statements:

"I submit that, I have filed the above suit for declaration and other reliefs. I submit that during the pendency of the suit, the 3rd defendant P.R. Palanisamy died on 02.01.1996. I further submit that there is a delay of 2037 days for filing petition under Order 22 Rule 4 of the Limitation Act and Section 151 CPC to implead the legal heirs of the deceased 3rd defendant P.R. Palanisamy. It is not wanton or wilful. Unless the delay of 2037 days are condoned, I will be put to irreparable loss and hardship."

4. Apart from this averment, there is absolutely no reason adduced for the inordinate delay of 2037 days in filing the application. In fact, the affidavit does not contain a mention that the petitioner was not aware about the death of the 3rd defendant and that he had come to know about it only recently. The 5th respondent had filed a counter statement, which was adopted by the respondent Nos. 4 and 5, wherein they had denied the allegations containing in the affidavit and further stated that the delay has not been explained.

5. The learned III Additional Sub Judge, Coimbatore, who had heard the Interlocutory Application, dismissed the said application stating that the statement has been filed bereft of details and without there being sufficient reasons for condoning the delay, the same could not be condoned. The said order has been challenged before this Court.

6. In this revision, the petitioner has filed C.M.P.No.13684 of 2004 seeking for Stay of all further proceedings in the suit in O.S.No.1010 of 1992 on the file of the learned III Additional Sub Judge, Coimbatore. From a reading of the averments made in the affidavit, it is clear that the petitioner was very much aware about the death of the 3rd respondent, which is evident from a reading of Paragraphs 7 and 8 of the affidavit, which is extracted hereinbelow:

"7. It is further submitted that the 3rd defendant P.R. Palanisamy died on 2.1.96 and it is further submitted that some of the respondents herein have filed O.S.No.285/83 before the District Munsif, Coimbatore and they have also filed I.A.No.309 to 313/99 in O.S.No.285/83 to implead the legal representatives and the same was ordered by the District Munsif without following the procedure against which the petitioner has preferred C.R.P.2962 to 2966/2000 before this Hon'ble Court and the same were allowed except C.R.P.2963/2000 by this Hon'ble Court and set aside the order of the District Munsif Court impleading the legal representatives without

following the procedure.

8.It is further submitted that right from 1996, there are several proceedings pending before several Courts with regard to the same property and in fact the 12th respondent herein has also filed a suit in O.S.No.1643/92 for permanent injunction and as such in view of the several proceedings before several Courts and also the counsel for the deceased 3rd defendant has not informed about the death of the 3rd defendant to the counsel for the petitioner before the Court below in a manner known to law, the details of the legal representatives were also not given by the counsel on record of the deceased 3rd defendant....."

7.Paragraph 8 makes interesting reading the petitioner would state that "the death of the 3rd respondent was not informed to the learned counsel for the petitioner in the manner known to law."

8.Further, the petitioner would attempt to throw the blame on a newly enrolled junior Advocate of the counsel without giving any details about the said junior. Be that as it may, the condonation of delay is not a matter of course. To have a delay condoned, more particularly, when the delay being inordinate, it is incumbent that the petitioner gives sufficient and convincing reasons that has led to the delay. In the instant case, the affidavit filed before the learned Sub Judge, Coimbatore, does not contain any averment either that the petitioner was not aware of the death of the 3rd respondent or the reasons for the delay. The affidavit in C.M.P.No.13684 of 2004 also clinches the fact that the petitioner was aware about the death and has not taken steps to bring the legal representatives of the 3rd respondent on record on time. For the abovesaid reasons, I find no reason to interfere with the order dated 25.03.2004 passed by the learned III Additional Sub Judge, Coimbatore in I.A.No.771 of 2002 in O.S.No.1010 of 1992.

In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mps

To

1.The III Additional Subordinate Judge,
Coimbatore.

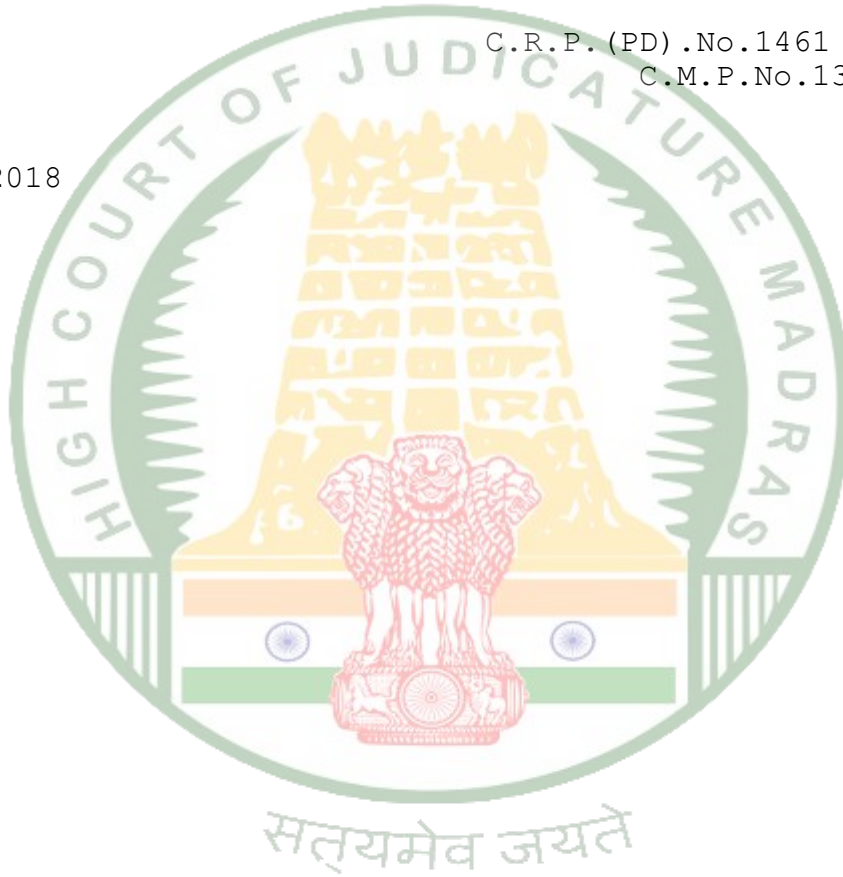
2.The Record Keeper,
VR Section,
High Court, Madras.

+lcc to Mr.M.Sriram, advocate sr.no.43989

+lcc to M/s.A.S. Kailasam and Associates, Advocate sr.no.43761

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C.M.P.No.13684 of 2004

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