



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.458 of 2018

and

CMP(MD)No.2029 of 2018

WEB COPY

1) Jeyamani
2) Somasundaram

... Petitioners

vs.

1) Rajaiah alias Raju
2) Indirani

... Respondents

Petition filed under Section 115 of the Civil Procedure Code, against the order and decree dated 30.11.2017 passed in I.A.No.405 of 2017 in I.A.No.652 of 2016 in I.A.No.653 of 2016 in O.S.No.161 of 2013 on the file of District Munsif Court, Periyakulam, Theni District.

For Petitioners : Mr.S.Alagusundar

ORDER

This Civil Revision Petition has been filed against the order and decree dated 30.11.2017 passed in I.A.No.405 of 2017 in I.A.No.652 of 2016 in I.A.No.653 of 2016 in O.S.No.161 of 2013 on the file of District Munsif Court, Periyakulam, Theni District.

2.The revision petitioners are plaintiffs and the respondents are defendants. The petitioners filed O.S.No.161 of 2013 on the file of the District Munsif Court, Periyakulam, Theni District, for declaration and permanent injunction against the respondents. According to the petitioners, originally, the suit was filed by their mother and natural guardian Palaniammal as they were minors. After they became major, they filed application to declare them as major and permit them to contest the above suit. The said application was allowed, however, the amendment was not carried out and therefore, the suit was dismissed on 02.07.2016. Thereafter, the petitioners filed restoration application along with condone delay petition in I.A.No.652 of 2016 to condone the delay of 15 days and the same was allowed on condition to pay cost of Rs.50/- to the legal aid. The said order was not complied with and therefore, the petitioners filed I.A.No.653 of 2016 for extension of time and the same was allowed on condition to pay cost of Rs.250/- to the legal aid. The said order was also not complied with and therefore, the petitioners filed the present I.A.No.405 of 2017 to condone the delay of 108 days in filing the above application. However, the Court below dismissed the said application by impugned order dated 30.11.2017, against which, the present revision petition has been filed.

3.Learned counsel for the petitioners contended that the petitioners were not well and the counsel not informed them about the cost ordered by the Court below and therefore, the above delay



occurred which is neither wilful nor wanton.

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

5. Perusal of records shows that though amendment application was ordered, amendment was not carried out and therefore, suit was dismissed, against which, the petitioners filed restoration petition along with condone delay petition to condone the delay of 15 days in filing the restoration petition which was ordered with cost of Rs.50/- payable to the legal aid. When the said order was not complied with, another petition was filed for extension of time to pay the cost which was also allowed extending the time upto 20.01.2017 with cost of Rs.250/- payable to the legal aid. But, even then, the petitioners had not paid the cost and filed the present interlocutory application with the delay of 108 days and the same was dismissed by the Court below by impugned order.

6. In my considered opinion, it is the duty of the petitioners to contact their advocate to know the status of their case. However, considering the legal position that merits of the matter should be looked into instead of throwing it on technicalities, this Court is of the view that ends of justice would be met by giving one more opportunity to the petitioners to contest the case on terms. Accordingly, the delay is condoned on payment of cost of Rs.5,000/- (Rupees Five Thousand only) payable by the petitioners to the Legal Services Authority attached to this Bench, within a week from the date of receipt of a copy of this order and the petitioners are also directed to pay the cost as ordered by the Court below in addition to payment of cost of Rs.5,000/- imposed by this Court. On compliance of such condition, the interlocutory application shall stand restored.

This Civil Revision Petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

The District Munsif Court,
Periyakulam, Theni District.

Copy to:

The Officer in Charge,
Legal Services Authority,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.Alagusundar, Advocate, SR.No. 52607

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