



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.08.2018
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.520 of 2018 and
C.M.P.(MD)No.2272 of 2018

WEB COPY

1. L.S.Mariappan
2. M.Kannan

... Petitioners/Respondents 1 & 3/
Defendants 1 & 3

Vs.

1. The Madura Hindu Permanent
Fund Limited,

Through its Administrative Officer,
Madurai.

... 1st Respondent/Petitioner/
Plaintiff

2. M.Lakshmanan

... 2nd Respondent/2nd Respondent/
2nd Defendant

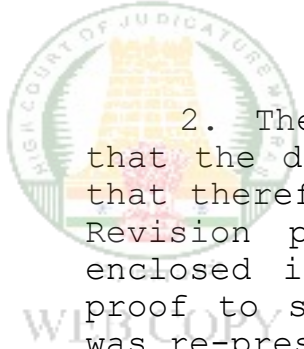
PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the petition and order dated 01.09.2017 made in I.A.No.594 of 2017 in O.S.No.105 of 2006 on the file of the learned V Additional District Judge, Madurai and set aside the same and allow the present Civil Revision petition.

For Petitioners : Mr.J.Anandkumar

For R-1 : Mr.R.Janakiramulu

ORDER

The Revision petitioners and the second respondent herein had taken Mortgage loan from the first respondent herein. As the loan was not cleared, the first respondent filed O.S.No.105 of 2006 before the learned District Judge, Madurai. Preliminary decree was passed on 25.02.2008. The first respondent filed final decree application on 10.09.2010. The same was returned, since it suffered from certain defects. The said Interlocutory application was re-presented with a delay of 25 days. It was on 29.10.2010. The said Interlocutory application was numbered as I.A.No.594 of 2017 after a gap of seven years and allowed without notice to the Revision petitioners on 01.09.2017. Thereafter, the final decree petition was numbered as I.A.No.625 of 2017. The correctness of the order dated 01.09.2017 allowing the I.A.No.594 of 2017 is under challenge in this Civil Revision petition.



2. The learned counsel for the Revision petitioners submits that the delay of seven years in re-representation is inordinate and that therefore, it could not have been allowed without notice to the Revision petitioners. He took this Court through the materials enclosed in typed set of papers and contended that there was no proof to show that the said interlocutory application in question was re-presented with the delay of 25 days.

3. This Court is unable to agree with the submission made by the learned counsel for the Revision petitioners. As pointed out by the learned counsel for the first respondent, the final decree application was admittedly filed within time on 10.09.2010. There is also intrinsic evidence to show that it was re-presented on 29.10.2010. It appears that the said Interlocutory application was not numbered for almost seven years. But this is the fault of the Court below. The party cannot suffer for any mistake committed by the Court.

4. It is well settled law that in a petition to condone the delay in re-representation, notice need not be ordered. Normally, notice will be ordered where the delay is inordinate. In this case, the petition has been re-presented with the delay of 25 days and thereafter, it was lying only in the court custody. The final decree application had been numbered and the Revision petitioners had also entered appearance. The order dated 01.09.2017 came to be challenged before this Court only in March 2018.

5. It is not in dispute that the Revision petitioners are mortgagors who had availed loan from the first respondent. This Court is of the view that interest of justice demands that the plaintiff is allowed to prosecute his final decree application and take it to its logical conclusion. The order passed by the Court below is rather discretionary in nature. This Court does not warrant any interference in exercise of jurisdiction under Article 227 of the Constitution of India.

6. The Civil Revision petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The V Additional District Judge,

<https://hcservices.ecourts.gov.in/hcservices/>

Madurai.



2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC to Mr.J.Anandkumar, Advocate, SR.No.78470

+1CC to Mr.R.Janakiramulu, Advocate, SR.No.78500

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