



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(NPD) (MD)No.1722 of 2015

and

M.P(MD) No.1 of 2015

1.Lakshmi

2.Saraswathi : Petitioners/Petitioners/Respondents/Plaintiffs

Vs.

1.Arumuga Devar

2.Illamaran : Respondents/Respondents/Appellants/Defendants

Prayer: Civil Revision Petition is filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 10.11.2014 passed in I.A.No.64 of 2013 in A.S.No.57 of 2008 on the file of the learned Subordinate Judge, Pudukkottai and to allow the same.

For Petitioners : Mr.R.P.Ramachanthiran
For Respondents : No Appearance

O R D E R

This civil revision is filed against the order dated 10.11.2014 passed in I.A.No.64 of 2013 in A.S.No.57 of 2008 on the file of the learned Subordinate Judge, Pudukkottai, dismissing the application to condone the delay of 1143 days in filing the petition to re-hear the main appeal.

2. The petitioners are the respondents in the appeal. The petitioners have filed the suit in O.S.No.78 of 2003 for declaration and consequential relief of injunction. The suit was decreed on 16.02.2007, against which, the respondents have filed the Appeal Suit in A.S.No.57 of 2008. The petitioners engaged Senior Counsel Thiru P.S.Fakeer Mohammed and he informed that the appeal would go on for two or three years and it is not necessary to contact him frequently. Believing the words of the Advocate, the petitioners have not contacted their Counsel. Afterwards, the petitioners came to know that their counsel has already passed away and an ex-parte order was passed in the appeal on 05.06.2008. When the petitioners came to know about the ex-parte order, there was a delay of 1143 days in filing a petition to re-hear the main appeal. As the delay



caused is neither wilful nor wanton, the petitioners have submitted the petition to condone the delay, however, the learned Trial Judge on 10.11.2014 has erroneously dismissed the same, against which the present Civil Revision Petition is filed.

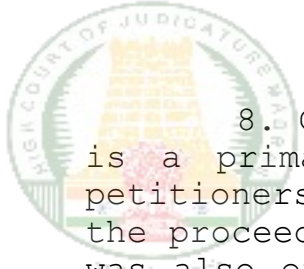
3. The respondents/Appellants, before the Appellate Court, through their counter affidavit has submitted that the petitioners had filed the present petition with an intention to drag on the proceedings. The appeal was allowed on 05.11.2009, only on merits. The ex-parte order was passed on 05.06.2008 and the same was in force and the appeal was pending for 17 months. The delay has not been properly explained and hence, prayed for dismissal.

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

5. Though notice has been served to the respondents and their name is also printed in the cause list, they did not appear either in person or through any counsel.

6. It is seen from the records that the above application has been filed to condone the delay of 1143 days in filing the application to re-hear the appeal. The petitioners are the respondents in the Appeal suit and plaintiffs in the suit in O.S.No.78 of 2003. The petitioners have filed the above suit for the relief of declaration and consequential injunction. The above suit was decreed in favour of the petitioners on 16.02.2007, against which, the respondents have preferred an Appeal suit in A.S.No.57 of 2008. It appears that the petitioners have engaged Thiru.P.S.Fakeer Mohammed, Senior Advocate. It is the case of the petitioners that the learned Counsel has informed that appeal will go on for three years and therefore, they need not contact him frequently. When the petitioners have taken the suit property through some persons, the respondents have claimed that the suit property belongs to them and the respondents had taken possession of the suit property. Afterwards, the petitioners came to know that their earlier Counsel had passed away and an ex-parte order was passed in the main appeal on 05.06.2008, though the appeal was filed in March 2008.

7. It is seen from the records that the petitioners have obtained decree in their favour. Subsequently, the respondents have filed an appeal in the year 2008. Though the petitioners have engaged an Advocate, it appears that they did not have knowledge about the proceedings. It is also seen from the records that the learned Counsel for the petitioners/respondents has passed away. The appeal has been allowed on merits in the absence of the petitioners/respondents. Though notice has been served on the petitioners/ respondents, the petitioners/ respondents have not appeared before the appellate Court. Only after receiving the lower Court records, the lower appellate Court has passed orders, on merits.



8. Considering the facts and circumstances of the case, there is a prima-facie case made out by the learned Counsel for the petitioners that the petitioners/ respondents was truly not aware of the proceedings of the appeal. It is pertinent to note that the suit was also ended in their favour. The petitioners have also engaged Senior Counsel and the Senior Counsel has also passed away and the petitioners were not aware about the order passed in the appeal. In a catena of cases, the Hon'ble Apex Court held that the length of delay is not only the criteria for deciding the appeal and the circumstances has to be looked into. The respondents also never appeared before this Court. Therefore, considering the facts and circumstances of the case, this Court feels that ends of justice would be met if this revision is ordered and therefore, the delay is condoned.

9. In the result, this revision is allowed and the order dated 10.11.2014, passed in I.A.No.64 of 2013 in A.S.No.57 of 2008 on the file of the learned Subordinate Judge, Pudukkottai, is set aside and the delay is condoned. Considering the circumstances of the case, the learned Subordinate Judge, Pudukkottai is directed to dispose of the appeal 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.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Pudukkottai.

+1CC TO M/S.R.P.RAMACHANTHIRAN, ADVOCATE, SR NO.53564

C.R.P. (NPD) (MD) No.1722 of 2015
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