



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.2028 of 2015

and

MP (MD) .No.1 of 2015

1.Narayanan @ Narayanasamy

2.Karupagambal

3.Durai

... Petitioners/plaintiffs

-vs-

Dhanalakshmi

... Respondent / defendant

Prayer: Civil Revision Petition filed under Section 115 CPC to set aside the fair and decreetal order dated 24.06.2015 passed in I.A.No.1315 of 2014 in O.S.No.813 of 2009 on the file of the II Additional Subordinate Judge, Thiruchirappalli.

For Petitioners : Mr.R. Subramanian

For Respondent : Mr. K. Govindarajan

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order, dated 24.06.2015 passed in I.A.No.1315 of 2014 in O.S.No.813 of 2009, on the file of the II Additional Subordinate Judge, Thiruchirappalli.

2. The revision petitioners, who are the plaintiffs, have filed a suit in O.S.No.813 of 2009, on the file of the learned II Additional Subordinate Judge, Thiruchirappalli, for partition and the same was dismissed for non-prosecution, due to the non-appearance of the petitioners on 06.02.2014. In such circumstances, the revision petitioners / plaintiffs have filed an application in I.A.No.1315 of 2014, to condone the delay of 151 days in filing an application for restoring the suit in O.S.No. 813 of 2009 and the same was dismissed on the ground that no proper reasons have been assigned in approaching the Court. Challenging the said order, the petitioner is before this Court.

3. The learned counsel appearing for the petitioners submitted that due to the ill-health of the first petitioner, the petitioners were unable to communicate their counsel. In such circumstances, the said suit was dismissed for default on 06.02.2014. He further submitted that the issue on hand requires



adjudication of rights and title of the plaintiffs and he prays for allowing this Civil Revision Petition.

4. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent. This Court also perused the material documents available on record.

5. It is well settled principles of law that application to condone the delay must be considered liberally and length of delay is not a criteria. The party must be given sufficient reasons for condoning the delay and the intention of the party must be *bona fide* and they must be given an opportunity to put forth their case on merits and should not be shut out at the threshold itself.

6. Keeping in mind the same, if the present case is looked into, this Court is of the view that the petition ought to be allowed and the order, dated 24.06.2015 passed in I.A.No.1315 of 2014 in O.S.No.813 of 2009, on the file of the II Additional Subordinate Judge, Thiruchirappalli, is liable to be set aside, subject to certain conditions.

7. In the result,

(i) this Civil Revision Petition is allowed by setting aside the order, dated, 24.06.2015 passed in I.A.No.1315 of 2014 in O.S.No.813 of 2009 on the file of the II Additional Subordinate Judge, Thiruchirappalli, and the application in I.A.No.1315 of 2014 is allowed and the delay is condoned on condition that the petitioners are directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent counsel, within a week from the date of receipt of a copy of this order.

(ii) On production of the payment receipt, by the petitioners within the time limit prescribed by this Court, the learned II Additional Subordinate Judge, Thiruchirappalli, is directed to number the restoration application, and dispose of the same within a period of four weeks, thereafter, after issuing notice to both parties.

(iii) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(cs-III)



To:

The II Additional Subordinate Judge,
Thiruchirappalli.

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

+1cc to Mr.R. Subramanian, Advocate Sr.No.74275
+1cc to Mr.K. Govindarajan, Advocate Sr.No.74201

TRP

VB/RP/SAR3/06.09.2018/ 3P/ 6C

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