



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.01.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (NPD) (MD)No.1792 of 2017

and

C.M.P. (MD)No.9574 of 2017

WEB COPY

1.M.Sudalaimuthu
2.M.Veerapandi
3.M.Muthupattan
4.M.Kandasamy

... Petitioners / Petitioners /
Petitioners / Defendants

vs.

1.M.Antonyammal
2.M.Selvi
3.M.Muthu Madathi
4.M.Madasamy
5.C.Lakshmi
6.P.Periya Muthiah
7.P.Sivan
8.M.Periya Madasamy
9.M.Chinna Madasamy

... Respondents / Respondents /
Respondents / Plaintiffs

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.690 of 2016 in I.A.No.360 of 2016 in O.S.No.172 of 2015 dated 06.01.2017 on the file of the Additional Sub-Court, Tirunelveli.

For Petitioners : Mr.H.Arumugam
For Respondents : Mr.S.P.Maharajan

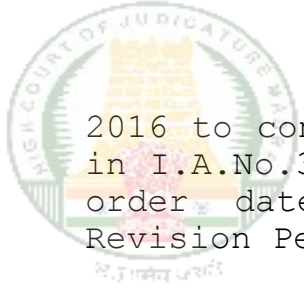
ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.690 of 2016 in I.A.No.360 of 2016 in O.S.No.172 of 2015 dated 06.01.2017 on the file of the Additional Sub-Court, Tirunelveli.

2. The facts of the case, as averred in the affidavit, are as follows:

2.1. Originally, the suit in O.S.No.172 of 2015 was filed by the respondents herein and as the petitioners herein failed to file their written statements on time, the suit was set ex-parte. Thereafter, the petitioners herein/defendants have filed I.A.No.360 of 2016 to set aside the ex-parte order, along with copy of written statements and the trial Court has ordered notice of hearing in I.A.No.360 of 2016.

As the petitioners herein failed to produce the copy of proof of service (notice of hearing), the trial Court has dismissed the said I.A.No.360 of 2016 for default. Thereafter, the petitioners have filed a petition in I.A.No.690 of



2016 to condone the delay of 81 days in filing restoration petition in I.A.No.360 of 2016, which was dismissed by the trial Court by an order dated 06.01.2017. Aggrieved thereby, the present Civil Revision Petition came to be filed.

3. The learned Counsel for the petitioners would submit that the fourth petitioner herein alone has filed the written statements and all the other petitioners have adopted the same. The fourth petitioner alone was following the case for all the petitioners. Since the fourth respondent was suffering from Rheumatic fever, he was not able to appear before the Court on the date of hearing before the trial Court and moreover, there was a boycott in the trial Court on the said date. Therefore, he was not able to follow the Court proceedings and not able to file the proof of service. But the trial Court has erroneously dismissed the said I.A.No.360 of 2016. By the time, he came to know about the dismissal order in I.A.No.360 of 2016, there was a delay of 81 days in filing the restoration petition in I.A.No.690 of 2016, which was dismissed by the trial Court.

4. Upon notice, the learned Counsel appearing for the respondents would submit that though the petitioner has filed the petition in I.A.No.360 of 2016, to re-open the case, the learned Counsel for the petitioner did not come up for arguing the re-open petition, which show the petitioner's intention to drag on the proceedings and therefore, he prayed for dismissing the civil revision petition.

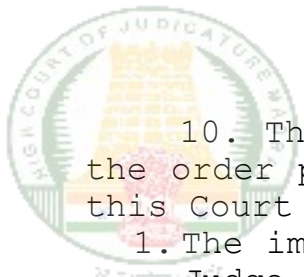
5. In reply to the above, the learned Counsel for the petitioners would submit that since the petition to re-open was not numbered, he was not able to make his arguments. He further contended that the learned trial Judge's finding with regard to the attitude of the petitioners is erroneous and perverse.

6. The learned Counsel for the petitioners further submitted that in fact they are interested in early disposal of the suit and that is why, along with I.A.No.360 of 2016, i.e., petition to set aside the ex-parte order, they had filed the written statements.

7. Heard the learned Counsel appearing for both sides and perused the documents placed on record.

8. Though this Court is not appreciative about the manner in which the matter has been dealt with by the learned Counsel for the petitioners, ends of justice will be met if one more opportunity is given to the petitioners to put forth their case.

9. Considering the facts and circumstances of the case, this Court is of the view that the delay of 81 days in filing the petition to restore I.A.No.360 of 2016 shall be allowed on terms.



10. Though the prayer of the present revision is with regard to the order passed in I.A.No.360 of 2016, in the interest of justice, this Court is passing the following order:

1. The impugned order passed by the learned Additional Subordinate Judge, Tirunelveli in I.A.No.690 of 2016 in I.A.No.360 of 2016 in O.S.No.172 of 2015 dated 06.01.2017 is set aside and consequently, I.A.No.360 of 2016 is allowed and the suit in O.S.No.172 of 2015 is restored to file, on condition that the petitioners shall pay a sum of Rs.2,000/- to the respondents, jointly or severally, within a period of one week from the date of receipt of a copy of this order, failing which, this Civil Revision Petition stands dismissed automatically, without any further reference.
2. In the event of petitioners effecting payment to the other side, as per the order of this Court, the learned Additional Subordinate Judge, Tirunelveli is directed to dispose of the suit in O.S.No.172 of 2015, after hearing all the parties, within a period of six months from the date of receipt of a copy of this order, in accordance with law.
3. The petitioners are directed to co-operate with the Court proceedings, without adopting any delay tactics.

11. The Civil Revision Petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Tirunelveli.

COPY TO:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.H.Arumugam, Advocate SR.No. 43218

+1cc to M/S.S.P.Maharajan, Advocate SR.No. 43175

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