



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.2319 of 2017

1.Rebeka
2.Mary Ranjitham : Petitioners / Petitioners / Plaintiffs

vs.

1.Selvaraj
2.Daniel Gnanaraj
3.John Chandira Raj : Respondents / Respondents / Defendants

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order in I.A.No.141 of 2013 in O.S.No.552 of 1995 dated 05.08.2015 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioners : Mr.N.Balakrishnan

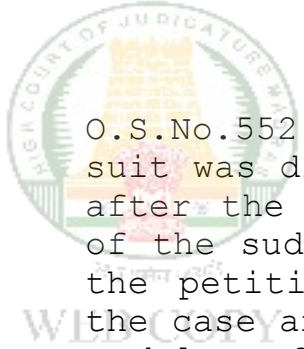
For Respondents / Caveator : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed by the learned Principal District Munsif, Tenkasi in I.A.No.141 of 2013 in O.S.No.552 of 1995 dated 05.08.2015.

2. The facts of the case are that the petitioners herein/plaintiffs have instituted a suit in O.S.No.552 of 1995, for the relief of declaration and permanent injunction. During the course of the proceedings, as the petitioners/plaintiffs remained absent, the suit was dismissed for default on 19.09.2011. In order to challenge the said order, the petitioners/plaintiffs have filed a petition to condone the delay of 427 days so as to file a restoration petition. The said condonation delay petition was dismissed by the lower Court, against which, the present revision came to be filed.

3. The learned Counsel for the petitioners would submit that the petitioners are sisters and both of them have married one person, namely George, who was taking care of the suit in



O.S.No.552 of 1995. The said George was died on 15.09.2011 and the suit was dismissed for default on 19.09.2011, i.e., just four days after the death of the petitioners'/plaintiffs' husband. Because of the sudden expiry of George, who was looking over the case for the petitioners/plaintiffs, they did not know about the fate of the case and when they came to know about the dismissal, there was a delay of 427 days in preferring a restoration petition and the delay is neither wilful nor wanton. But, the lower Court has erroneously dismissed the condone delay petition and therefore, he seeks interference from this Court.

4. Heard the learned Counsel for the petitioners and perused the documents placed on record. There is no representation for the first respondent, despite caveat petition in Caveat(MD)No.67 of 2016 was filed. Notice to the other respondents is dispensed with.

5. It is seen that originally the respondents were set *ex-parte*, against which, after a period of four years, they have filed a petition to set aside the *ex-parte*, which was dismissed by the Court below. The said dismissal order was challenged before this Court in C.R.P.(MD)Nos.1039 & 1061 of 2005 and this Court, by an order dated 09.11.2010, has allowed the petition on condition to pay a sum of Rs.5,000/- to the respondents therein/petitioners herein. Therefore, the petitioners are under the sole impression that the suit is pending.

6. It is also seen that on 15.09.2011, one George, the husband of both the petitioners/plaintiffs, who was looking over the suit was expired and after four days of his expiry, i.e., on 19.09.2011, the suit was dismissed for default. After knowing this development, the petitioners, in order to restore the suit, have filed the condonation delay petition, which was also dismissed by the Court below, challenging which, they had filed the present Civil Revision Petition. Though the present Civil Revision Petition was filed on time, there was delay of 511 days in representing the same, which, after some rounds of litigation, was allowed by this Court on payment of a sum of Rs.3,000/- to the Legal Aid Service Authority. After effecting such payment, the present Civil Revision Petition came into action.

7. Considering the facts and circumstances of the case, I am of the view that in the interest of justice, no prejudice will be caused to the other side in allowing this petition. Therefore, I am inclined to interfere in the impugned order.

8. In result, this Civil Revision Petition is allowed. The impugned order dated 05.08.2015 is set aside and consequently, the restoration petition is allowed and the suit in O.S.No.552 of 1995 is restored to file. The learned Principal District Munsif, Tenkasi is directed to dispose of the suit within a period of six



months from the date of receipt of a copy of this order. Both the parties are directed to co-operate for the same. No costs.

Sd/-

Assistant Registrar (T&P)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Tenkasi.

+1cc to Mr.N.Balakrishnan, Advocate Sr.No.48469

GK

VB/KKR/SAR1/27.02.2018/3P/3C

C.R.P. (NPD) (MD) No.2319 of 2017
14.02.2018