



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.06.2018
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(MD) (NPD) No.2394 of 2017

1.Annadurai
2.Raman
3.Ramesh
4.Vijayalakshmi Manoharan

..Petitioners/Petitioners/Defendants

Vs.

1.Sivan
2.Muniasamy

..Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed by the appellants under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 07.10.2017 passed in I.A.No.494 of 2017 in O.S.No.56 of 2016 on the file of Additional District Munsif Court, Thoothukudi.

For Petitioners : Mr.G.Thalaimutharasu
For Respondents : Mr.S.Sivathilakar

J U D G M E N T

The petitioners in this petition are the defendants in O.S.No.56 of 2016. The petitioners herein had filed I.A.No.494 of 2017 on the file of the Additional District Munsif Court, Tuticorin to condone the delay of 80 days in preferring an appeal to set aside the ex-parte order. Even though the petitioner categorically explained the reasons for delay, without considering the same has dismissed the said application. Challenging the same, the petitioners are before this Court.

2.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

3.The learned counsel for the petitioners submitted that the petitioners are working in various category and the second petitioner alone is contesting the case on behalf of the petitioners. While so, due to ill health of his father and heavy work, the second petitioner could not contact the counsel to file counter in I.A.No.494 of 2017. Even though the above said facts have brought to the knowledge of the Trial Court, the Trial Court without considering the same dismissed the above said I.A.No.494 of 2017 filed by the petitioners to condone the delay in preferring the



appeal to set aside the ex-parte decree. Hence, the petitioners are before this Court with the aforesaid prayer.

4. The learned counsel for the respondents would submit that the land in question is an poromboke land. The respondents are having a temple namely "Vannara Madasamy Temple" in the said land and they are celebrating poojas hereditarily. The temple is said to have constructed by the ancestors of the respondents. While so, the petitioners are said to have disturbed the respondents and restrained the respondents from conducting poojas with a view to encroach the said land. Hence, the wife of the first respondent lodged a complaint against the petitioners herein. Since the case was purely on civil dispute, the respondent police directed the parties to approach the civil Court to get remedy. Hence, the respondents have filed O.S.No.56 of 2016 on the file of the learned Principal District Munsif Court, Tuticorin restraining the petitioners herein from interfering with the peaceful possession of the property of the respondents and for injunction. Since the petitioners herein did not come forward to contest the case, the Trial Court came to the conclusion that the documents filed by the respondents herein are true and hence, the suit was decreed in favour of the respondents herein.

5. The learned counsel for the respondents has contended that the petitioners have filed the petition only with an intention to drag on the proceedings and the delay in preferring the appeal has not been properly explained.

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

7. It is not in dispute that the Trial Court had passed an ex-parte order in the suit filed by the respondents herein and the revision petitioners decided to file an appeal before the concerned Appellate Court, of course, with the delay of certain days. The only reason adduced on the side of the revision petitioners is that they were not able to contact their Advocate pursuant to their work and therefore, the appeal could not be filed in time.

8. In the present case on hand, it has been repeatedly reiterated by the petitioners that pursuant to their engagement in work, there was no communication between them and their Advocate and therefore, the delay has occurred in filing appeal, which is an acceptable ground to consider the case of the petitioners. Accordingly, upon hearing both sides and finding merits in contention raised by the petitioners, this Court is of the view that the order dated 07.10.2017 passed in I.A.No.494 of 2017 in O.S.No.56 of 2016 by the Additional District Munsif Court, Thoothukudi, is



9. In the result,

(a) this Civil Revision Petition is allowed and the order dated 07.10.2017 passed in I.A.No.494 of 2017 in O.S.No.56 of 2016 by the Additional District Munsif Court, Thoothukudi, is hereby set aside, subject to the condition that the petitioners shall pay a sum of Rs.1,000/- (Rupees One Thousand only) to the respondents herein within a period of two weeks from the date of receipt of copy of this order;

(b) the learned Additional District Munsif, Thoothukudi, on production of the receipt in proof of payment of costs by the petitioners within the time limit prescribed by this Court, is directed to number the appeal and dispose of the same, within a period of fifteen days from the date of production of receipt. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. Additional District Munsif,
Thoothukudi.

2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 Copies).

+1CC to Mr.G.Thalaimutharasu Advocate in SR.No.69126.

+1CC to Mr.S.Sivathilakar Advocate in SR.No.69338.

TA

DS/RP/SAR-4 :17.07.2018: 3P/6C

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