

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019

PRONOUNCED ON : 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.M.P.No.7412 of 2019

in

AS.SR.No.33640 of 2019

1.Sree Jaishna Briquettes
Represented by Sole Proprietor,
Mr.Hariharan

2.Hariharan .. Petitioners/Appellants

Vs.

J.Jayachitra .. Respondent/Respondent

Prayer :- This Civil Miscellaneous Petition has been filed under Order 41 Rule 3A of CPC to condone the delay of 369 days in filing the above appeal.

For Petitioners : Mr.J.Kingsly Solomon

For Respondent : Mr.T.M.Hariharan

ORDER

This Civil Miscellaneous Petition has been laid by the petitioners/Appellants to condone the delay of 369 days in preferring the first appeal.

2.It is found that the respondent has levied the suit against the petitioners for recovery of money and after contest, the suit levied by the respondent/plaintiff has come to be decreed. Impugning the same, the petitioners have come forward with the first appeal. However, as they had not preferred the appeal in time and there occurred the delay of 369 days in preferring the same, for the condonation of the abovesaid delay, the present petition has come to be laid by them.

3.It is found that the suit levied by the respondent/plaintiff had been disposed of on 05.07.2017. Furthermore, it is noted that the respondent has levied the execution petition in R.E.P.No.72 of 2018 for enforcing the decree obtained by her by way of bringing the properties belonging to the petitioners for sale to realise the decretal amount. The same had also been accepted by the petitioners and the petitioners thus have knowledge of the abovesaid E.P. Proceedings and that the properties had been brought to auction sale on 26.02.2019. Thus, it is seen that only after the initiation of the execution proceedings and the suit properties belonging to the petitioners/appellants had been brought for auction sale, it is found that the petitioners have come forward with the appeal with the delay. Now, according to the petitioners, they had sent all the papers to their counsel and could not able to follow their counsel in preferring the appeal in time due to the mental agony caused by the respondent and hence, the delay had occurred.

4.The abovesaid cause projected by the petitioners is stoutly challenged by the respondent/plaintiff in her counter and according to her, the abovesaid cause has been designedly projected by the petitioners without any base and the abovesaid cause is totally vague and untenable and hence, according to the respondent/plaintiff, only to stop the execution proceedings levied by her one way or the other and thereby, prevent her from realising the fruits of the decree, the appeal has come to be levied by the petitioners with the delay and hence, according to the respondent, no indulgence should be shown to the petitioners as they had not adduced any cause at all for the condonation of the delay and also not buttressed the same even prima facie by acceptable and reliable materials and hence, prayed for the dismissal of the petition.

5.As abovenoted, it is not the case of the petitioners that they are not aware of the disposal of the suit levied by the respondent in her favour. In such view of the matter, the petitioners, if aggrieved over the same, are bound to either challenge the same as per law or comply with the judgment and decree of the trial Court. The petitioners having not evinced to adopt any one of the abovesaid methods, left with no other alternative, the respondent/plaintiff had initiated the execution proceedings for enforcing the decree obtained by her and thereby, brought the properties belonging to the petitioners/appellants for sale.

6. Accordingly, it is seen that only after the properties had been brought for auction sale, the petitioners have chosen to prefer the first appeal with delay. In such view of the matter, it is seen that the petitioners are unable to place any acceptable and tenable cause for the delay. Very vaguely, they have averred that they had sent the papers to their counsel and could not follow their counsel in preferring the appeal in time in the matter due to the mental agony caused to them by the respondent. As abovenoted, the respondent had contended that the abovesaid cause given by the petitioners for the delay is completely vague and baseless. As rightly put forth by the respondent, as to when the petitioners had sent the papers to their counsel in preferring the appeal, as to what further steps they had taken to proceed further and why they had not endeavoured to follow their counsel and prefer the appeal in time, with reference to the same, absolutely, there is no averments put forth in the petition. It is thus found that as rightly contended by the respondent, only after the properties of the petitioners/appellants had been brought for auction sale, the petitioners had endeavoured to prefer the appeal and therefore, the delay had occurred.

7. As regards the alleged mental agony said to have been caused to them by the respondent, the petitioners would plead that the respondent had also levied the criminal case against them under the Negotiable

Instruments Act and according to them, the same had come to be dismissed. As rightly put forth by the respondent, the dismissal of the criminal case by itself would not lead to the conclusion that she is not entitled to recover the amount due to her from the petitioners/appellants and therefore, according to the respondent, the abovesaid reason has been projected only to earn the sympathy from the Court. It is seen that when the prosecution of the criminal case on the part of the respondent has got nothing to do with the present issue and as abovenoted, when the petitioners are fully aware of the institution of the suit by the respondent and had taken part in the same and also aware of the disposal of the suit in favour of the respondent/plaintiff, despite the same, they having not evinced interest to proceed further and levied the appeal with delay without giving cause whatsoever for the condonation of the delay, it is clear and evident that only to stifle the execution proceedings levied by the respondent, the petitioners have come forward with the petition and in such view of the matter, no indulgence could be extended in favour of the petitioners.

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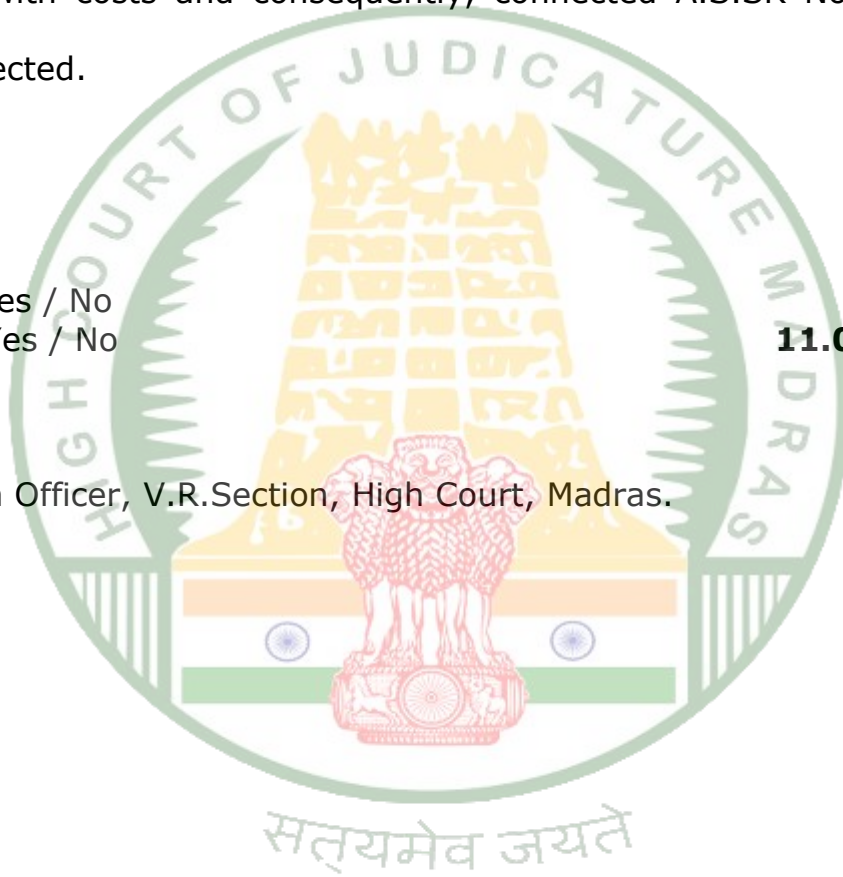
8. For the reasons aforestated, inasmuch as no sufficient cause has been adduced by the petitioners for the delay and when the alleged cause projected by the petitioners is found to be totally vague and untenable and also not substantiated by the petitioners with acceptable and convincing materials and further, inasmuch as the present petition is

found to have been laid only to stifle the execution proceedings levied by the respondent so as to deprive her from enjoying the benefits of the decree passed by the trial Court, in such view of the matter, in all, the petition is found to be totally devoid of merits and hence, the same is dismissed with costs and consequently, connected A.S.SR No.33640 of 2019 is rejected.

Index : Yes / No
Internet : Yes / No
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The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in C.M.P.No.7412 of 2019
in
AS.SR.No.33640 of 2019**

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