

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.3314 of 2018

1.Mrs.Selvi
2.Mr.B.Prabu

... Petitioners

-Versus-

1.Tmt.P.Dhanam
2.Mr.P.Balakumaran
3.Mr.Kathiravan
4.Mr.Senthil Kumar

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the conditional order dated 14.08.2018 made in the docket of I.A.No.12082 of 2017 in O.S.No.1441 of 2014 by the learned VI Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.L.Rajendran
For Respondent(s) : Mrs.A.Manju for R1
No appearance for RR2 to 4

ORDER

This revision is directed against the order passed by the learned VI Additional Judge, City Civil Court, Chennai, dismissing the petitioner's application in I.A.No.12082 of 2017 filed under Order IX Rule 9 of CPC for restoration of the suit in O.S.No.1441 of 2014 which was dismissed for default on 24.08.2017.

2. The petitioners herein are the plaintiffs in the suit which has been filed for partition and separate possession of 1/5 share and for mesne profit. The said suit came to be dismissed on 24.08.2017 due to non appearance of the plaintiffs. Subsequently, the petitioners filed an application for restoration of the suit which was allowed by the trial court on condition that the petitioners should pay the cost of Rs.1,500/- or before 24.09.2018. It was further directed that in the in

default the petition would stand dismissed automatically. Since the petitioners failed to pay the cost within the time stipulated, the petition for restoration of the suit stood dismissed. Challenging the above said order, the petitioners are before this court with this revision petition.

3. I have heard the learned counsel for the petitioner and the learned counsel for the 1st respondent and also perused the records carefully.

4. According to the petitioner, the conditional order passed by the court below was not noted properly by the counsel who had appeared for the petitioner in the court below and as such the order could not be communicated to the petitioners in time. So, the petitioners were not able to comply with the conditions. The learned counsel for the petitioner, on instructions, submitted that the petitioners are prepared to pay additional cost to the contesting respondent in the revision besides the cost ordered by the court below.

5. This court finds some justification in the submissions made by the learned counsel for the petitioner and this court also does not find any mala fide intention on the part of the petitioners to drag on the proceedings. Considering the fact and circumstances of the case, this court is inclined to set aside the order of the court below, however, on further conditions.

6. For the foregoing discussions, the impugned order is set aside on condition that the petitioners should jointly pay a further cost of Rs.2,000/- directly to the learned counsel for the 1st respondent herein besides the cost ordered by the court within a period of two weeks from the date of receipt of a copy of this order and in default, the civil revision petition stand automatically dismissed without any reference to the court and the order of the court below would stand restored. Considering the fact that the suit is pending since 2014, on payment of cost, the court below shall restore the suit to its file, proceed with the trial and dispose of the suit as expeditiously as possible. This Civil Revision Petition is allowed with the above conditions. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

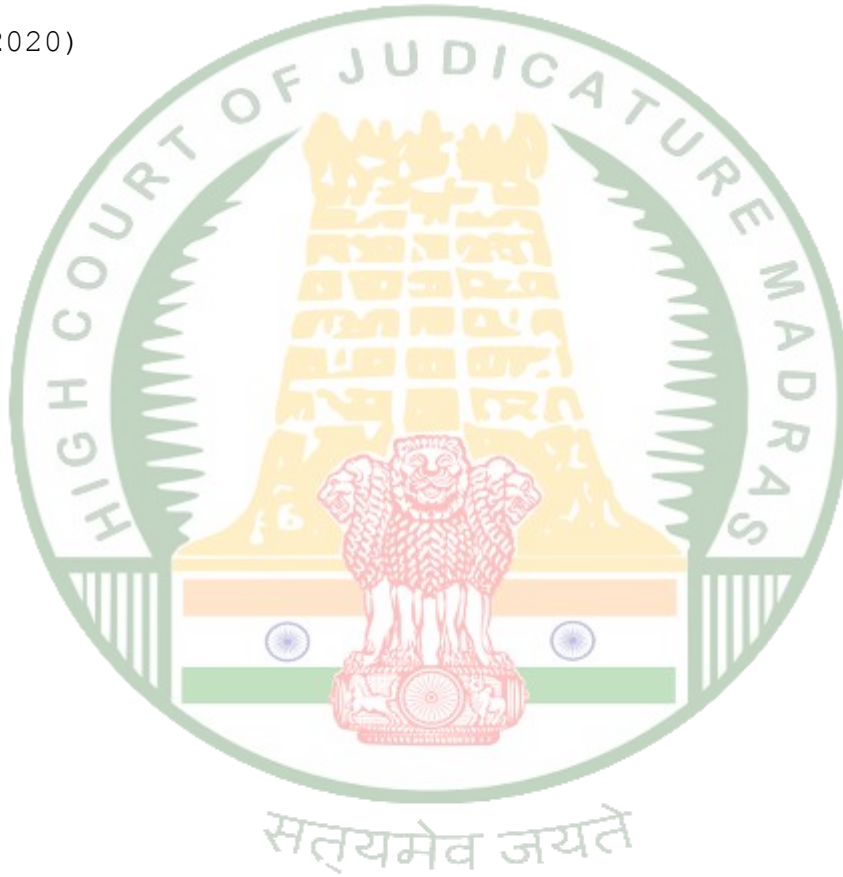
To

1.The VI Additional Judge,
City Civil Court, Chennai.

+1cc to M/s.L.Rajendran, Advocate SR.103599

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RP(CO)
CB(18/02/2020)



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