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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.09.2019
CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD)No.2348 of 2011
and
M.P.(MD) No.1 of 2011

1.Swaminathan
2.Kathirvel
3.Sundaram
4.Muthusamy
5.Manivel ...Petitioners/Petitioners/Respondents/Plaintiffs

Vs.

Nallakamu ... Respondent/Respondent/Petitioner/Defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 16.09.2011 passed in I.A.No.290 of 2011 in I.A.No.512 of 2010 in O.S.No.122 of 2010 on the file of the District Munsif, Nilakkotai.

For Petitioners : Mr.H.Lakshmi Shankar
For Respondent : Mr.Radhi Sathish

ORDER

The above civil revision petition has been filed challenging the order rejecting the application for condoning the delay of 112 days in filing the objection to the Commissioner's report.

2.The facts in brief which are necessary to dispose of the above civil revision petition are as follows:-

The revision petitioners herein who are the plaintiffs had filed a suit for permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit properties. Pending the suit, an Advocate Commissioner had been appointed and he had submitted his report on 01.12.2010. The petitioners who were aggrieved with certain observations in the report, had filed their objections with a delay of 112 days. The only reason that has been given for the delay is that the plaintiff was affected by jaundice and was therefore unable to meet the Advocate giving necessary instructions.

3.A reading of the objection would indicate that the plaintiffs are aggrieved with certain observation that has been made in respect of the physical feature as reported by the Advocate Commissioner.

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4.The trial in the suit is yet to commence and no serious prejudice is going to be caused to the defendant in ordering the said application and the objection is taken on file as the plaintiffs have to prove the contentions raised by them in the objection. The learned Judge has failed to take note of this and has simply refused to condone the delay.

5.This Court is of the firm opinion that the interest of justice would be sub-served if the delay is condoned and the objection is taken on file. Therefore, the order in I.A.No.290 of 2011 in I.A.No.512 of 2010 in O.S.No.122 of 2010 on the file of the District Munsif, Nilakkottai is set aside and the learned District Munsif, Nilakkottai, shall take the objection to file. Considering the fact that the objection of the plaintiffs are now directed to be taken on file, the defendant/ respondent shall also submit his objection if any within a period of 15 days from the date of receipt of a copy of this order. This Civil Revision Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif,
Nilakkotai.

+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate (SR-88796[F] dated 24/09/2019)
+1 CC to Mr.N.SATHISH BABU, Advocate (SR-89270[F] dated 25/09/2019)

C.R.P. (PD) (MD)No.2348 of 2011
and
M.P.(MD) No.1 of 2011
23.09.2019

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