



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Monday, the Sixteenth day of September Two Thousand and Nineteen

PRESENT

The Hon'ble Mrs.Justice J.NISHA BANU

CMP(MD).Nos.5445, 8472, 5446 and 8470 of 2019

in

SA(MD).No.533 of 2011 and CRP(MD).No.1392 OF 2011

1 K.Amaravathi

2 Ramakkal ... Petitioner/Appellant in All cases

Vs

1 Krishnasamy Naicker

2 Pappammal @ Pethakkal

Sakkaraisamy (Died)

3 Rengasamy

4 Chinnapandiyan @ Pomminaickar

5 Selvaraj @ Samy Naicker

6 Vijayapandiyan @ Jakkamanaic

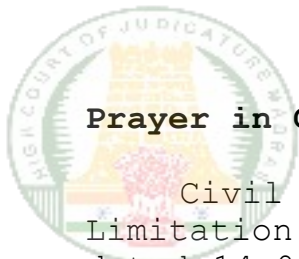
...1 to 6th Respondents/Respondents in all cases

7 Chinnathai

...7th Respondent/Respondent in CMP(MD).Nos.5446, 8470 of 2019

Prayer in CMP(MD).No.5445 of 2019 :-

Civil Miscellaneous Petition is filed under section 5 of Limitation Act, praying this Hon'ble Court to condone the delay of 67 days in filing the petition seeking to set aside the order dated 14.03.2019 dismissing the SA(MD)No.533 of 2011 on the file of this Hon'ble Court for non prosecution.



Prayer in CMP(MD) .No.8472 of 2019 :-

Civil Miscellaneous Petition is filed under section 5 of Limitation Act, praying this Hon'ble Court to set aside the order dated 14.03.2019 dismissing the SA(MD)No.533 of 2011 on the file of this Hon'ble Court for non prosecution and restore the same.

Prayer in SA(MD) .No.533 of 2011 :

Second Appeal is filed under section 100 of Civil Procedure Code, praying this Hon'ble Court against the judgment and decree dated 24/08/2006 made in OS.No.738/2004 on the file of District Munsif Court, Periyakulam confirming the Judgment and Decree dated 14/02/2011 made in AS.No.86/2009 on the file of Sub Court, Theni.

Prayer in CMP(MD) .No.5446 of 2019 :-

Civil Miscellaneous Petition is filed under section 5 of Limitation Act, praying this Hon'ble Court to condone the delay of 67 days in filing the petition seeking to set aside the order dated 14.03.2019 dismissing the CRP(MD)No.1392 of 2011 on the file of this Hon'ble Court for non prosecution.

Prayer in CMP(MD) .No.8470 of 2019 :-

Civil Miscellaneous Petition is filed under section 5 of Limitation Act, praying this Hon'ble Court to set aside the order dated 14.03.2019 dismissing the CRP(MD)No.1392 of 2011 on the file of this Hon'ble Court for non prosecution and restore the same.

Prayer in CRP(MD) .No.1392 of 2011 :

Civil Revision Petition is filed under section 115 of Civil Procedure Code, praying this hon'ble Court against the fair and decreetal order dated 07.07.2011 made in EA No.36/2011 in EP No.3 of 2009 in OS No.738 of 2004 on the file of District Munsif Court, Periyakulam.

ORDER:-

Civil Miscellaneous Petitions are coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. Pon.Karthikeyan, Advocate for the Petitioners in all cases and of Mr. B.Prahalad Ravi, Advocate for the respondents in all cases, this Court made the following order:

C.M.P(MD)No.5445 of 2019 has been filed by the petitioners seeking to condone the delay of 67 days in filing a petition to set aside the dismissal order dated 14.03.2019, made in S.A(MD)No.533 of



2011 which was dismissed for non-prosecution on 14.03.2019. C.M.P (MD)No.8472 of 2019 has been filed by the petitioners seeking to restore S.A(MD)No.533 of 2011 on file.

2.C.M.P(MD)No.5446 of 2019 has been filed by the petitioners seeking to condone the delay of 67 days in filing a petition to set aside the dismissal order dated 14.03.2019, made in C.R.P(MD)No.1392 of 2011 which was dismissed for non-prosecution on 14.03.2019. C.M.P(MD)No.8470 of 2019 has been filed by the petitioners seeking to restore C.R.P(MD)No.1392 of 2011 on file.

3.Heard the learned counsel appearing for the petitioners as well as 1st respondent.

4.The learned counsel appearing 1st respondent would submit that the petitioners have been continuously seeking adjournments in the main matter and on 06.03.2019, there was no representation on behalf of the petitioners and hence, the matter was directed to be posted on 14.03.2019 under the caption 'for dismissal'. Even on 14.03.2019, when the matter was taken up for hearing, there was no representation on behalf of the petitioners and therefore, the second appeal as well as the civil revision petition have been dismissed for non-prosecution.

5.The learned counsel appearing for the petitioners would submit that they are ready to argue the matter and therefore, he would pray for one more opportunity and also to fix a date for final hearing.

6.In reply, the learned counsel for the first respondent does not have any objection for allowing the petitions.

7.Considering the submissions made on either side and also considering the reasons stated in the affidavits filed in support of the petitions, the dismissal orders dated 14.03.2019 made in S.A(MD) No.533 of 2011 and C.R.P(MD)No.1392 of 2011 are set aside and S.A (MD)No.533 of 2011 and C.R.P(MD)No.1392 of 2011 are restored to file.

8.These petitions are ordered accordingly.

9.Registry is directed to post S.A(MD)No.533 of 2011 and C.R.P (MD)No.1392 of 2011 for final hearing on 30.09.2019.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

1. The District Munsif, Periyakulam.
2. The Subordinate Judge, Theni.

Copy to:

The Section Officers, Judicial Section and VR Section
Madurai Bench of Madras High Court, Madurai
(To List the Main Cases for Final Hearing on 30.09.2019).

+2CC to Mr.T.Ramesh Raja, Advocate, SR.No.15518 & 15519.

ORDER DATED : 16/09/2019

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RESTORED

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CMP(MD) . Nos.5445, 8472,
5446 and 8470 of 2019

in
SA(MD) .No.533 of 2011 and
CRP(MD) .No.1392 OF 2011

Giving direction and etc.
as stated within.

CS(24.09.2019) 4P 8C