



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM:

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THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.P. (MD) No.8362 of 2019

and

C.R.P. (MD) No.SR9038 of 2019

S.Parameswaran Alias Poullose (Died)

1. Leelambika,
2. Sadasivan,
3. George Kutti @ Thampiraj,
4. Ganesh,
5. Madhu
6. Vinu,

... Petitioners / Petitioners

Vs.

K.Jayachandran

... Respondent / Respondent

PRAYER in C.M.P. (MD) No.8362 of 2019: Civil Miscellaneous Petition is filed under Section 5 of Limitation Act, to condone the delay of 1430 days in filing the above Civil Revision Petition against the Judgment and decree dated 28.04.2015 passed in I.A.No.420 of 2014 in O.S.No.441 of 2011 on the file of the Learned II Additional District Munsif Court, Kuzhithurai, Kanyakumari District.

PRAYER in C.R.P. (MD) No.SR9038 of 2019: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 28.04.2015 passed in I.A.No.420 of 2014 in O.S.No.441 of 2011 on the file of the learned II Additional District Munsif Court, Kuzhithurai, Kanyakumari District.

For Petitioners : Mr. G.Ramanathan

For Respondent : Mr. K.N.Thambi

O R D E R

This Civil Miscellaneous Petition is filed under Section 5 of Limitation Act, to condone the delay of 1430 days in filing the above Civil Revision Petition against the Judgment and decree dated 28.04.2015 passed in I.A.No.420 of 2014 in O.S.No.441 of 2011 on the file of the Learned II Additional District Munsif Court, Kuzhithurai, Kanyakumari District.



2. The petitioners 1 to 4 herein are the defendants 2 to 5 in the suit, the petitioners 5 and 6 herein are the legal representatives of the first defendant and the respondent herein is the plaintiff in the suit. The respondent / plaintiff filed a suit in O.S.No.441 of 2011 seeking for a prayer of declaration and for recovery of possession. The suit was decreed on 12.03.2014. Against which, the first defendant filed a petition to condone the delay of 180 days in filing an *exparte* set aside petition and that petition was dismissed with costs by the trial Court. Against the dismissal order, the petitioners preferred Civil Revision Petition and there is a delay of 1430 days and this Civil Miscellaneous Petition is filed to condone the delay of 1430 days in filing the Civil Revision Petition.

3. On the side of the petitioners, it is stated that I.A.No.420 of 2014 was filed by the first defendant to set aside the *exparte* decree in O.S.No.441 of 2011, dated 12.03.2014 and that after the *exparte* decree, a petition under Section 5 of the Limitation Act, to condone the delay of 180 days was filed and that petition was dismissed. The first defendant was ill and was not able to contact the lower Court counsel and later the first defendant died on 03.08.2016 due to his illness. The first defendant was looking after the case and the other defendants and the legal representatives of the first defendant were not aware of the order of dismissal and only on notice in the execution petition, they came to know about the dismissal order and hence, they filed this petition, to condone the delay in filing the Civil Revision Petition against the order in I.A.No.420 of 2014.

4. On the side of the respondent / plaintiff, it is stated that there were five defendants in the suit, the first defendant was aged about 85 years, the second defendant was aged about 53 years, the third defendant was aged about 55 years, the fourth defendant was aged about 35 years and the fifth defendant was aged about 33 years old. Even if the first defendant was in ailment, the other defendants, who are all major might have continued to contest the case. It is further stated that the defendants filed vakalat and they filed written statement in the suit and only subsequently, they were set *exparte* and they cannot claim that they were not aware of the suit proceedings.

5. On the side of the respondent, it is stated that the defendants were set *exparte* in the year 2014 itself and I.A. petition was dismissed on 28.04.2015, more than one year prior to the death of the first defendant. After the death of first defendant i.e. on 03.08.2016 no steps was taken to file Civil Revision Petition. The only reason stated in the petition is that the petitioners were not aware of the order of dismissal and they came to know about the case only after service of notice in the execution petition. No explanation for not taking steps from the



year 2014 to 2016 was given, in this petition. When the petitioners received the notice in the Execution Petition, why the other defendants did not take any action were not explained. Though the respondent / plaintiff got the decree in the year 2014, the respondent is not able to enjoy the fruits of the decree.

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6. A judgment of this Court published in **2001 (2) MLJ 734 [Reliance Industries Limited Vs. M.Rajkumari]** is cited, wherein, it is stated that "sufficient cause" must be a cause which is beyond the control of the party invoking the aid of the Section. A cause for delay, which a party could have avoided by the exercise of due care and attention cannot be a sufficient cause.

7. On the side of the petitioners, it is stated that the Miscellaneous Petition was filed in the year 2018 and the legal representatives of the first defendant were impleaded on 16.11.2018 and the Civil Revision Petition was filed on 26.02.2019 and there was no delay on the part of the petitioners, after receipt of the notice in the Execution Petition. A judgment of the Hon'ble Supreme Court published in **2008 (14) SCC 582 [State (NCT of Delhi) Vs. Ahmed Jaan]** is cited.

8. On the side of the petitioners, it is stated that in the interest of justice the petition should be allowed with a direction to dispose the suit within a time frame.

9. It is seen that when five defendants were contesting a suit, after filing written statement all of them were set exparte. Though the first defendant was taking care of the case, he did not take any action to set aside exparte order, within the time limit. The first defendant filed a set aside petition with a delay of 180 days and the I.A.No.420 of 2014 and the same was dismissed by the trial Court on 28.04.2014, until his death, in the year 2016, the first defendant did not take any steps to file Civil Revision Petition the other defendants also did not take any steps to file Civil Revision Petition in time. The only reason stated for the delay in filing this petition is that the petitioners are not aware of the dismissal of the suit. When the other defendants are parties to the suit they cannot claim that they are not aware of the dismissal of the suit. The second contention is that the petitioners came to know about the dismissal of the suit only after the notice in the Execution Proceedings. When the notice was served upon the petitioners is not stated in the petition. Each day delay is to be explained. There is an inordinate delay of 1430 days which is not explained. There is no reason sufficient enough to interfere in the lower Court's order. In the above circumstances, liberty is given to the petitioners to file separate suit questioning the validity of the decree, if they are so advised.



10. With the above observations, this Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected C.R.P.(MD) No.SR9038 of 2019 is rejected at the SR stage itself.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls
To

1.The II Additional District Munsif Court,
Kuzhithurai,
Kanyakumari District.

2.The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.P. (MD) No.8362 of 2019
and
C.R.P. (MD) No.SR9038 of 2019
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VB(24.01.2020) 4P 4C