



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (MD)No.1464 of 2018 (NPD)

and

C.M.P. (MD)No.6324 of 2018

P.Chellammal (Died)

1.P.Rajesh Kannan

2.P.Sumathi

...Petitioners / Petitioners/
Appellants

Vs.

M.Fatima Ghani

... Respondent / Respondent /
Respondent

PRAYER: Civil Revision Petition is filed, under Under Section 115 of the Code of Civil Procedure, against the order dated 28.04.2018 made in I.A.No.59 of 2017 in A.S.S.R.No.4458 of 2017 on the file of the Principal District Judge, Dindigul.

For Petitioners : Mr.T.Lajapathi Roy
For Respondent : Mr.A.Hariharan

O R D E R

This Civil Revision Petition has been filed against the order, dated 28.04.2018 made in I.A.No.59 of 2017 in A.S.S.R.No.4458 of 2017 on the file of the Principal District Judge, Dindigul.

2.The I.A.No.59 of 2017 was filed to condone the delay of 258 days in filing the appeal. The Court below rejected the said application stating that the revision petitioners have not shown any other reason or ground for the delay of 258 days, which is inordinate, other than the averments that the petition filed to set



aside the exparte decree dated 01.07.2016 passed in O.S.No.213 of 2008 was dismissed on 02.03.2017 and thereafter, on 02.05.2017, the first petitioner Chellammal had died, after prolonged illness and in view of the same, the appeal could not be filed in time.

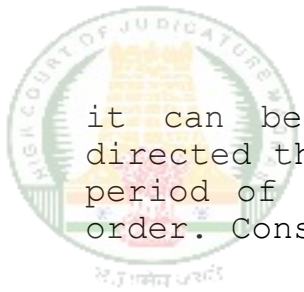
3.The case of the revision petitioners is that the Court below failed to consider the fact that they have filed an application in I.A.No.385 of 2016 seeking to set aside the exparte decree, dated 01.07.2016 and the same was dismissed on 02.03.2017. Thereafter, the revision petitioners filed appeal against the exparte decree, dated 01.07.2016 along with application in I.A.No.59 of 2017 to condone the delay of 258 days in filing the appeal. However, the Court below has dismissed the said application on 28.04.2018. Hence, he prayed for setting aside the order passed by the Court below and allow this Civil Revision Petition.

4.On the other hand, the learned counsel for the respondent strongly opposed for allowing this revision and contended that the Civil Revision Petition is liable to be dismissed, since the revision petitioners are habitual defaulters and even in the earlier three occasions, the suit was decreed as exparte, due to the non appearance of the first defendant and also for not filing the written statement. In such of the case, the present application, to condone the delay in filing the present appeal, is deliberate and intentional and therefore, he opposed the present petition and pleaded to dismiss the same. He would also submit that the Execution Petition filed by the respondent in E.P.No.158 of 2016 is pending.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.The first defendant Chellammal was set exparte by the trial Court on 01.07.2016 and the final decree was passed by the Court below on 02.03.2017. Thereafter first defendant was passed away on 02.05.2017 due to illness. Therefore, the revision petitioners herein filed the appeal before the appellate Court as soon as the Court below dismissed the application to set aside the exparte order. Therefore, he contended that the delay in filing the appeal is not wanton and wilful due to the reasons that he was awaiting for the order of the trial Court. Further, the first defendant was not well for quite some time and finally she was passed away. In such of the case, the Court below should have considered these facts, but without considering all these facts, the appellate Court dismissed the application to condone the delay of 258 days in filing the appeal. Therefore, in the interest of justice, this Court is inclined to set aside the order passed by the Court below.

7.Accordingly, the order dated 28.04.2018 is set aside and this Civil Revision Petition is allowed with a cost of Rs.10,000/-, which is payable by the petitioners to the respondent. With regard to all



it can be raised before the first appellate Court. This Court directed the first Appellate Court to dispose of the appeal within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petition is closed.

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Assistant Registrar (AD I)

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Sub Assistant Registrar(CS)

To
The Principal District Judge, Dindigul.

C.R.P (MD) No.1464 of 2018
17.09.2019

KK/SAR/10.10.2019/3P-2C/