



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (PD) (MD) No.1541 of 2018

and

C.M.P. (MD) Nos.6718 of 2018 & 628 of 2019

WEB COPY

1.Vijayalakshmi

2.Venkatprasath

... Petitioners/Petitioners

Vs.

R.Krishnamurthi

... Respondent/ Respondent

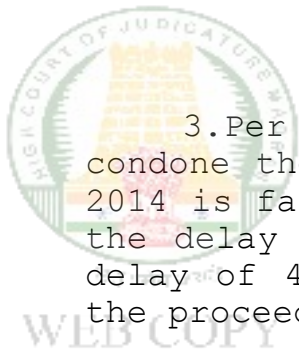
PRAYER: Civil Revision Petition filed under Section 115 of the Constitution of India, against the order made in I.A.No.62 of 2016 in O.S.No.111 of 2014, dated 03.04.2018, on the file of Principal District Judge, Tiruchirappalli.

For Petitioners : Mr.N.Mohideen Basha
For Respondent : Mr.R.Krishnamurthi
(party-in-person)

O R D E R

This Civil Revision Petition has been filed by the petitioners against the order dated 03.04.2018, made in I.A.No.62 of 2016 in O.S.No.111 of 2014, on the file of Principal District Judge, Tiruchirappalli.

2. The respondent herein, who is the plaintiff in the suit has filed O.S.No.111 of 2014 before the learned Principal District Judge, Trichirappalli for recovery of money due for damages and for permanent injunction and the same was allowed by the trial Court. Subsequent to that, the petitioners herein filed an Interlocutory Application in I.A.No.62 of 2016 stated that they have not received any suit summons from the Court and there was no personal service of summons on them. The petitioners did not reside in the address given in the plaint on the date of suit. They came to know about the passing of the exparte decree only when the respondent marking the certified copy of the judgment on 15.10.2015 in another proceeding in E.P.No.889 of 2004 in O.S.No.2953 of 1996. Due to their ailment, they could not come out of Bangalore and they could not file the petition to set aside the exparte decree on 14.11.2015. There was a delay of 30 days in filing the petition. The delay is neither wilful nor wanton. Hence, they prayed in the said I.A that the delay in filing the petition to set aside the exparte decree has to be condoned.



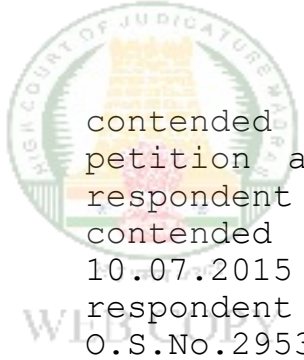
3. Per contra, the respondent would contend that the petition to condone the delay of 30 days in I.A.No.62 of 2016 in O.S.No.111 of 2014 is false and from the date of the order in O.S.No.111 of 2014, the delay comes to 497 days and they had not mentioned the actual delay of 497 days. Hence, they filed the petition only to drag on the proceedings.

4. The respondent contended that the interim stay order obtained by the petitioners herein in C.M.P.(MD)No.6718 of 2018 stating that there is no caveat petition filed before this Court against the order in O.S.No.111 of 2014, on the file of the learned Principal District Judge, Tiruchirappalli, in the order of I.A.No.62 of 2016 in O.S.No.111 of 2014, Ex.R5 is a returned cover with caveat petition which has proved that the petitioners have falsified. Hence, the respondent herein has sought for vacating the order of interim stay that was granted on 26.07.2018 in C.M.P.(MD)No.6718 of 2018 and also sought for dismissing the Civil Revision Petition.

5. Heard both sides.

6. The respondent herein has contended that the decree was passed in O.S.No.111 of 2014, dated 10.10.2014 and E.P. proceedings was also initiated based on the suit decree. He further contended that the suit filed by him in O.S.No.2953 of 1996, on the file of the I Additional District Munsif Court, Tiruchirappalli was decreed and E.P. proceedings are also pending in E.P.No.889 of 2004. He also contended that the petitioners in this C.R.P.1541 of 2018 is well aware of the decree passed in the said suit and also the E.P. proceedings. It is also contended by the respondent herein that the petitioners herein have furnished different address in different petitions and they wantonly evaded the service in the suit proceedings as well as in the E.P. proceedings. Further, the petitioners also sold the property to another person, during the pendency of the suit. Hence, the attitude of the petitioners filed the petition only to drag on the proceedings and that they did not know anything about the proceedings only after the death of the father, they came to know the proceedings are entirely false. Even during the life time of the petitioners' father, the suit was decreed and the E.P. proceedings was also initiated.

7. On a perusal of the records, it is seen that I.A.No.62 of 2016 was filed by the petitioners herein, who are the defendants in the suit, have stated that they came to know that the decree was passed in the suit in O.S.No.111 of 2014 only when the plaintiff marked the certified copy of the judgment and decree on 15.10.2015 in another proceedings in E.P.No.889 of 2004 in O.S.No.2953 of 1996, on the file of the I Additional District Munsif Court, Tiruchirappalli. It is further contended by the petitioners that they were ill due to some inconvenience. Further, they stated that there is no personal service of summon and the ex parte decree was passed on paper publication and hence, from the date of knowledge of 30 days they have preferred the petition. Hence, the petitioners



contended that there is a delay of 26 days in filing the said petition and that the delay is neither wanton nor wilful. The respondent herein, who is the petitioner in C.M.P.No.628 of 2019 has contended that the date of knowledge of the exparte decree on 10.07.2015 and the delay is not 29 days. It is contended by the respondent herein that the E.P. proceedings in E.P.No.889 of 2004 in O.S.No.2953 of 1993 before the learned I Additional District Munsif Court, Tiruchirappalli, the date of knowledge has been stated as 15.10.2015, which is very false one, since the date of knowledge is 10.07.2015 itself. Hence, it is contended by the respondent herein that the petitioners' counsel also has filed a memo regarding the date of knowledge, in which, the petitioners herein have signed the same. These are all the facts to prove the same that the petitioners herein have knowledge as early on 10.07.2015 itself.

8.The trial Court after observing the contention raised by both petitioners and respondent and had discussed the same elaborately from the date of service to the respondent and also till the notice in the E.P. proceedings at every stage and has given a finding especially that the arguments advanced by the respondent that an exparte decree was passed only on service by way of paper publication was also noted by the trial Court. When the trial Court after perusal of the documents and evidence placed by these petitioners, has concluded that regarding the delay and the reasons for such delay was not properly explained by the said petitioners and the said petition was dismissed.

9.Aggrieved against the said order, this Civil Revision Petition has been preferred by the petitioners herein/respondents, in which, they have also obtained an interim stay. It is observed that the caveat petition that is pending before this Court as contended by the respondent herein, who is aggrieved against the order of interim stay and the petitioner herein/ respondents have fully aware and knowledge about E.P. proceedings and they have also sold the suit property to another person during the pendency of the suit and also involved un-ruly methods and caused inconvenience to the respondent herein, the criminal proceedings were also initiated against the petitioners herein. Hence, this Court does not interfere with the order passed by the trial Court.

10.Considering all the facts and circumstances and on hearing both sides and also on perusal of the records, this Court finds that there is no merit in this Civil Revision Petition and hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /



To

1.The Principal District Judge,
Tiruchirappalli.

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

+1 CC to M/s.R.KRISHNAMURTHI, Party in Person
(SR-50119[F] dated 27/02/2019)

+1 CC to M/s.N.MOHIDEEN BASHA, Advocate(SR-50617[F]dated 28/02/2019)

C.R.P. (PD) (MD) No.1541 of 2018
and
C.M.P. (MD) Nos.6718 of 2018 & 628 of 2019
27.02.2019

Ls/MSA

ES/22.04.2019/4P/6C