

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.923 of 2017

1.S.Palaniammal

2.A.Palanisamy

3.P.Rathinasamy

4.P.Velusamy

5.P.Jothiswaran

6.P.Anandkumar

7.S.Vasalachi

8.A.Sarathamani

9.S.Vasanthamani

.. Petitioners/Plaintiffs

Vs.

1.N.Karthikeyan

2.P.Sivakumar

3.A.Mahendrarajan

4.M.Rajammal

.. Respondents/Defendants

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 26.07.2016 made in I.A.No.397 of 2015 in O.S.No.1576 of 2010 on the file of the III Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.D.R.Arunkumar

For R1 to R3 : Mr.K.Myilsamy

For R4 : Ms.V.S.Usharani

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 26.07.2016 made in I.A.No.397 of 2015 in O.S.No.1576 of 2010 on the file of the III Additional District Munsif Court, Coimbatore.

2.The petitioners are the plaintiffs and the respondents are defendants in O.S.No.1576 of 2010 on the file of the III Additional District Munsif Court, Coimbatore. The petitioners filed the said suit for permanent injunction. The respondents filed written statement and are

contesting the suit. The suit was dismissed for default on 21.03.2014. The petitioners filed I.A.No.397 of 2015 to condone the delay of 143 days in filing the petition to restore the suit on 11.09.2014. According to the petitioners, the 3rd petitioner was present in the Court on 21.03.2014 and sought for adjournment on the ground that he has filed application for certified copies of the document and he has not received the same from the Registrar Office. The learned Judge has rejected the said request and dismissed the suit. He went to Kerala for his ailment and returned only on 20.04.2014 and contacted his Advocate and filed petition to restore the suit.

3.The 1st respondent filed counter affidavit and the respondents 2 and 3 adopted the same. The respondents 1 to 3 contended that the petitioners are fully aware that the suit would be dismissed, they did not appear to conduct the trial. The petitioners have not given any reason for the delay and prayed for dismissal of the petition.

4.The learned Judge considering the averments made in the affidavit, counter affidavit and the Court records, dismissed the petition on the ground that the petitioners filed false affidavit and the reason given by the petitioners for delay is not true.

5.Against the said order of dismissal dated 26.07.2016 made in I.A.No.397 of 2015, the petitioners have come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioners reiterated the averments made in the affidavit filed in support of the above petition and contended that the petition filed to condone the delay must be considered liberally. The length of the delay is not a criteria and acceptability of explanation for the delay is the only criteria. Section 5 of the Limitation Act does not say that discretion of the Court can be exercised only when the delay is within certain limit. The learned Judge dismissed the petition without giving any opportunity to the petitioners to conduct the case. The

petitioners are not chronic defaulters. The delay is not huge so as to prejudice the respondents and petitioners must be given opportunity to conduct the case on merits and prayed for allowing the Civil Revision Petition.

7.The learned counsel appearing for the respondents 1 to 3 reiterated the averments made in the counter affidavit and contended that the petitioners have not given any valid reason for condoning the delay. The learned Judge, considering all the materials available on record, dismissed the petition by giving cogent and valid reason. There is no reason to interfere with the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 to 3 and 4th respondent and perused the entire materials available on record.

9.From the materials available on record, it is seen that the petitioners have filed suit for permanent injunction and the same was dismissed for default on 21.03.2014. According to the petitioners, on the date, the 3rd petitioner was present in the Court and sought for an adjournment. The learned Judge verified the Court records and found that on number of hearings, the suit was adjourned for trial and on 21.03.2014, there was no representation for the petitioners. Considering the Court records, the learned Judge held that the petitioners have filed a false affidavit. The learned Judge further held that if really, the 3rd petitioner was present in the Court on 21.03.2014, he would have filed petition to restore the suit within the period of limitation. Now the reason given by the 3rd petitioner that after dismissal of the suit he went to Kerala for his ailment and returned only on 20.04.2014 is not supported by any document. Further, the 3rd petitioner having returned in April 2014, filed petition only in September 2014. The petitioners have not explained the delay by any acceptable reason.

10. It is well settled that length of delay is not a criteria but the reason given by the parties must be valid and acceptable. The attitude of the parties must be bonafide and should not cause any prejudice to the other side. There must be sufficient reason for condoning the delay. In the present case, the petitioners have not given sufficient and valid reason for condoning the delay. The learned Judge has considered all the materials available on record and dismissed the petition. There is no irregularity or illegality in the order of the learned Judge warranting interference by this Court.

11. In the result, the Civil Revision Petition stands dismissed. No costs.

15.09.2020

Index : Yes/No

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V.M.VELUMANI, J.

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To

III Additional District Munsif Court

Coimbatore.

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