



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (P.D.) (MD) .No.736 of 2018

and

C.M.P. (MD) .No.3196 of 2018

1.Iyappan
2.Velammal

... Petitioners/Petitioners/Appellants

Vs.

Mohaiyadeen Pathumal
through her Power of Attorney,
Mohammed Pasultheen,
S/o. Abdul Kasim,
Door No.10/1, Gandhi Nagar,
Sengottai,
Sengottai Taluk,
Tirunelveli District.

... Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.01.2018 made in I.A.No.177 of 2017 in unnumbered appeal suit in G.L.No.12416, dated 08.08.2014 on the file of the Principal District Judge, Tirunelveli and allow the civil revision petition.

For Petitioners : Mr.A.Arumugam
For Respondent : Mr.A.Haja Mohideen

O R D E R

The Civil Revision Petition has been filed against the fair and decreetal order dated 18.01.2018 made in I.A.No.177 of 2017 in unnumbered appeal suit in G.L.No.12416, dated 08.08.2014 on the file of the Principal District Judge, Tirunelveli.

2. The respondent filed a suit against the petitioners for declaration and recovery of possession in O.S.No.132 of 2011 on the file of the Additional Sub Court, Tenkasi. The suit was decreed. Challenging the said order, the petitioners have filed an appeal. The memorandum of appeal papers were returned by the appellate Court. Therefore, subsequently, they represented the papers with the delay of 1022 days. That petition was dismissed by



the appellate Court. Challenging the said order, the petitioners have filed the present revision petition before this Court.

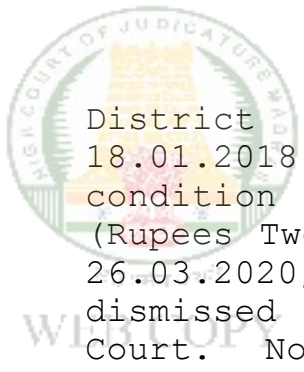
3. The learned counsel for the petitioners would submit that though they filed the appeal in time, the appeal papers were returned for some defects. Since the first petitioner was suffered from jaundice and also due to poverty, they were not in a position to mobilise the Court fees to be paid in the appeal. That is the reason why there was a delay in filing the appeal. After mobilising the fund for paying the Court fees in the appeal, they have filed an application in I.A.No.177 of 2017 to condone the delay of 1022 days in representing the appeal. The appellate Court failed to consider the facts that the petitioner was suffering from jaundice and they could not mobilise funds for payment of Court fees and dismissed the petition. Therefore, they approached before this Court.

4. The learned counsel for the respondent would submit that after decreed the suit, he filed the Execution Petition and during the E.P. proceedings only, he has filed the petition to condone the delay of 1022 days in representing the appeal and there is no sufficient reason given to condone the enormous delay of 1022 days in representing the appeal. Only to protract the E.P. proceedings, initially they have filed the appeal. But, when the Office returned the papers for payment of Court fees, they have not paid the Court fees only to stall the E.P. proceedings.

5. I have heard the learned counsel for the petitioners, learned counsel for the respondent and perused the materials available on record.

6. Though the respondent filed the suit against the petitioners in the year 2011, he got the decree only on 28.03.2014 and he filed the execution petition in E.P.No.112 of 2014 in the year 2014. The said execution petition was pending for more than two years and after two years, the petitioners have filed a petition before the appellate Court only to stall the E.P. proceedings. Though the appeal was filed in time, it was returned for some defects that sufficient Court fees have not been paid in the appeal.

7. Though the delay is inordinate, in order to give an opportunity to the parties, this Court is inclined to set aside the order of the appellate Court. However, it has to be compensated by the petitioners to the respondent for the inconvenience caused to him for three years, that too after filing the E.P., they have filed the petition. Therefore, in the interest of justice, in order to give an opportunity to the petitioners, this Court set aside the order passed by the learned Principal



District Judge, Tirunelveli in I.A.No.177 of 2017, dated 18.01.2018. Accordingly, the Civil Revision Petition is allowed on condition that the petitioners shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondent on or before 26.03.2020, failing which, the revision petition will stand dismissed automatically without any further reference to this Court. No costs. Consequently, the connected Miscellaneous Petition is closed.

8. List the matter on 27.03.2020 for reporting compliance.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

akv

To
The Principal District Judge,
Tirunelveli.

+1CC TO MR.J.C. RATHNAVEL PANDIAN, Advocate Sr. No. 5223

C.R.P. (P.D.) (MD) .No.736 of 2018
12.03.2020

DB(CO)
TR(23.03.2020)3P 3C