



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

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THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.1345 of 2015

1.Sumithradevi
2.Minor Niranjana
3.Minor Rahaviha : Petitioners/Petitioners/Proposed Plaintiffs

.. Vs ..

Vadivel : Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order of the learned District Munsif, Thuraiyur, in I.A.No.528 of 2014 in O.S.No.294 of 2008, dated 24.03.2015 and allow this Civil Revision Petition.

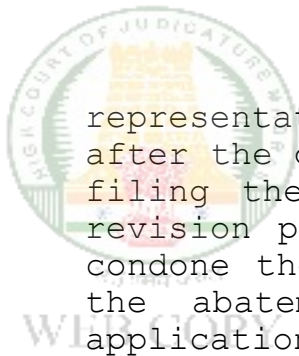
For Petitioners : Mr.S.Muthukrishnan

For Respondent : Mr.S.Muthu Malai Raja

ORDER

This Civil Revision Petition is directed against the order of the District Munsif Court, Thuraiyur, in I.A.No.528 of 2014 in O.S.No.294 of 2008 dismissing the petition to condone the delay of 1251 days in filing a petition to set aside the abatement caused by the death of original plaintiff.

2.The revision petitioners are the wife and children of the original plaintiff in the suit in O.S.No.294 of 2008. The first petitioner's husband filed a suit in O.S.No.294 of 2008 for specific performance of an agreement of sale stated to have been executed by the defendant in the suit in favour of the husband of the first petitioner. The plaintiff died. Thereafter, a petition to implead the legal heirs ought to have been filed by the legal



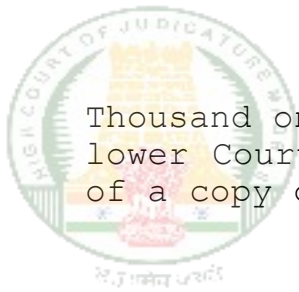
representatives of the deceased plaintiff within 90 days. Even after the grace period of 60 days, there was a delay of 1251 days in filing the petition to set aside the abatement. Therefore, the revision petitioners filed an application in I.A.No.528 of 2014 to condone the delay of 1251 days in filing the petition to set aside the abatement caused by the death of the plaintiff. This application was dismissed on the ground that no reason was stated for the delay.

3.The learned Counsel appearing for the petitioners submitted that the delay is only in filing a petition to set aside the abatement and that the lower Court has dismissed the application without an application of mind as to the *bona fide* reasons and the case pleaded by the revision petitioners. The learned Counsel then submitted that the first petitioner is a widow and other petitioners are the minor children of the first petitioner. Since the petitioners were not aware of the proceedings initiated by the husband of the first petitioner, it is stated that the delay of 1251 days ought to have been condoned having regard to the peculiar facts and circumstances of this case.

4.However, the learned Counsel appearing for the respondent contested the Civil Revision Petition mainly on the ground that the petitioners have not given any reason in their affidavit filed before the lower Court. Referring to some of the judgments of the Hon'ble Supreme Court and this Court, the learned Counsel appearing for the respondent submitted that the Court will not exercise its discretion or show any indulgence to a person who was so negligent in prosecuting the case. The petition filed by the revision petitioners before the lower Court was to condone the delay of 1251 days in filing a petition to set aside the abatement caused by the death of the plaintiff. The first petitioner is the wife and other petitioners are the minor children of the plaintiff. There is no document or material produced by the respondent to show that the petitioners had knowledge about the suit and the proceedings initiated by the husband long prior to the date on which they filed the petition. The revision petitioners appears to have a chance of success in the suit and by dismissing the petition to condone the delay in filing a petition to set aside the abatement, the petitioners' right is put to an end. The petitioners deserve one opportunity in this case where there is no document or material produced before the Court below to hold that the petitioners had knowledge about the proceedings initiated by the husband of the first petitioner. In such circumstances, the explanation offered by the revision petitioners can be accepted as valid.

5.As a result, this Civil Revision Petition is allowed and the order passed in I.A.No.528 of 2014 in O.S.No.294 of 2008 on the file of the District Munsif Court, Thuraiyur, is set aside. Having regard to the delay, much inconvenience is caused to the respondent.

<https://hccr.courts.gov.in/hccr/cr> Hence, the petitioners shall pay a sum of Rs.2,000/- (Rupees Two



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Thousand only) to the respondent or respondent's Counsel, before the lower Court within a period of three weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The District Munsif,
Thuraiyur.

C.R.P. (MD)No.1345 of 2015

03.09.2020

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