



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2020

CORAM

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

C.R.P. (NPD) (MD)No.1455 of 2015

1.Muthiah Thevar
2.Murugan

: Petitioners/Petitioners/Plaintiffs

.. Vs ..

1.Chockalingam
2.Senthatti Pandian
3.Renganathan
4.Narayanan
5.Ragavan
6.Sridhar

: Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order, dated 13.03.2014 in I.A.No.56 of 2014 in O.S.No.37 of 2007 on the file of the Additional District Munsif Court, Srivilliputhur.

For Petitioner	:Mr.A.R.M.Ramesh
For R1	:Mr.K.Vijayanand
For R2	:No Appearance
For R3 to R6	:Dismissed
	(vide Court Order dated: 15.12.2017)

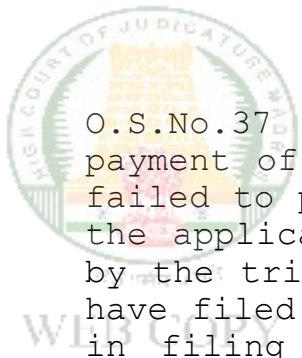
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ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional District Munsif, Srivilliputhur, in I.A.No.56 of 2014 in O.S.No.37 of 2007, dated 13.03.2014.

2.Brief facts that are necessary for the disposal of this revision petition are as follows:

3.The revision petitioners are the plaintiffs in the suit in O.S.No.37 of 2017. The suit was filed by the revision petitioners for declaration of title and for consequential permanent injunction in respect of the suit property. It appears that the suit was dismissed for default and hence, an application in I.A.No.759 of 2012 was filed by the revision petitioners to restore the suit in



O.S.No.37 of 2017 on file. The said application was allowed on payment of cost on or before 16.09.2013. The revision petitioners failed to pay the cost within the time. However, instead of filing the application to extend the time for payment of cost as directed by the trial Court in I.A.No.759 of 2012, the revision petitioners have filed an application in I.A.No.56 of 2014 to condone the delay in filing a petition to restore the application and also filed another application in I.A.No.57 of 2014 to restore I.A.No.759 of 2012. Stating that the revision petitioners ought to have filed only an application to extend the time and that the petition filed for restoration of I.A.No.759 of 2012 and to condone the delay in filing a petition to restore I.A.No.759 of 2012 are not appropriate, the lower Court dismissed both the applications. Aggrieved by the order in I.A.No.56 of 2014, the above revision petition is filed.

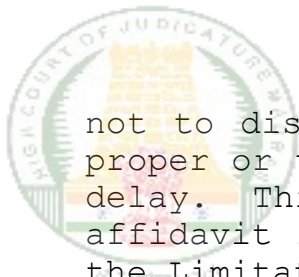
4.The learned Counsel for the revision petitioner submitted that the revision petition is filed only against the order dismissing the petition filed under Section 5 of Limitation Act to condone the delay in filing a petition to restore I.A.No.759 of 2012. He further stated that an appeal is preferred as against the order dismissing the petition filed to restore I.A.No.759 of 2012.

5.Though the lower Court is technically correct, substantial rights of parties cannot be foreclosed on technical reasons. The petitioner's petition for restoration of I.A.No.759 of 2012 was allowed on payment of cost. Since cost was not paid, the petition for restoration was dismissed for non-payment of cost. Rightly the order dismissing I.A.No.759 of 2012, was taken as one, which is dismissed for default. This Court is unable to find fault with the revision petitioners in filing a petition to restore I.A.No.759 of 2012. Since the revision petitioners have given proper reasons for the delay, the application in I.A.No.759 of 2012 ought to have been restored and allowed, upon payment of cost, as directed by the lower Court.

6.The learned Counsel for the first respondent has serious objection and contended that the lower Court is right in dismissing the petition filed under Section 5 of the Limitation Act and the application to restore I.A.No.759 of 2012.

7.As pointed out earlier, the substantial rights of the parties cannot be foreclosed in a summary manner without giving an opportunity to the petitioners/plaintiffs to file fresh application. In this case, that is not necessary, as the petition in I.A.No.759 of 2012 was allowed on terms and later dismissed only for non-payment of cost.

8.This Court has repeatedly held that in a matter condoning the delay, the Court should be lenient and it should always be the object of the Court to render substantial justice to the parties and



not to dismiss the application, merely because the reasons are not proper or the explanation could have been more accurate for each day delay. This Court is fully convinced with the reasons stated in the affidavit filed in support of the petition filed under Section 5 of the Limitation Act for the delay.

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9.As a result, this Civil Revision Petition is allowed and the order passed by the learned Additional District Munsif, Srivilliputhur, in I.A.No.56 of 2014 in O.S.No.37 of 2007, dated 13.03.2014 is set aside. The petition in I.A.No.56 of 2014 in O.S.No.37 of 2007, dated 13.03.2014, stands allowed. The respondents herein are put to much inconvenience, since the matter is pending for more than five years and the suit is of the year 2007 and the same is now being restored much to the disadvantage and inconvenience of the respondents. In these circumstances, the petitioners are directed to pay a sum of Rs.2,000/- in addition to the amount of cost directed by the lower Court to the respondents or to the respondents' Counsel before lower Court within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CrI.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Additional District Munsif,
Srivilliputhur.

+1 CC to Mr.A.R.M. RAMESH, Advocate SR-15039.

C.R.P. (NPD) (MD)No.1455 of 2015

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