



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP (MD) No.2237 of 2019

1.Ramasamy

2.Balu @ Balasubramanian

... Petitioners/Petitioners/
Appellant

Vs.

1.Palaniyappan

2.Neela

3.The District Collector,
rep.by the Tamil Nadu Government,
Pudukottai.

4.The Revenue Divisional Officer,
Pudukottai.

... Respondents/ Respondents/
Respondents

Civil Revision Petition filed under Section 11th of Civil procedure code to set aside the order of the learned Additional Sub Judge, Pudukkottai in I.A.No.189 of 2017 in A.S.No.8 of 2013 dated 12.09.2019 and allow this Revision Petition.

For Petitioners : Mr.S.Muthukrishnan

For R1 & R2 : Mr.N.Balakrishnan

For R3 & R4 : Mr.M.Jeyakumar
Additional Government Pleader

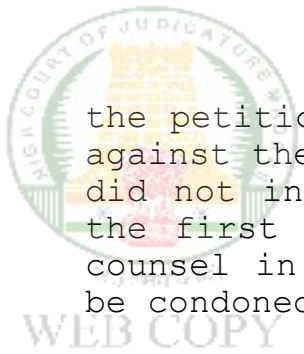
ORDER

The respondents 1 and 2 herein/plaintiffs filed a suit for bare injunction and got a decree in their favour. Against which, the petitioners/defendants 1 and 2 filed an appeal in A.S.No.8 of 2013 on the file of the Additional Sub Judge, Pudukottai. The said appeal was dismissed for default. Therefore, they filed an application in I.A.No.189 of 2017 to restore the appeal and to file the restoration application there is a delay of 990 days. The petition to condone the delay was dismissed by the learned Additional Sub Judge, Pudukottai. Challenging the said order of dismissal, the petitioners are before this Court by filing this Civil Revision Petition.

2.Heard the learned counsel on either side.

3.The learned counsel for the petitioners would submit that

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the petitioners/defendants 1 and 2 filed an appeal in the year 2013 against the judgment and decree of the trial Court and their counsel did not inform about the stage of appeal and due to ill-health of the first defendant, he could not give proper instructions to his counsel in time to restore the appeal. Therefore, the delay has to be condoned.

4.The learned counsel for the contesting respondents would submit that after filing of the appeal in the year 2013, the petitioners/defendants 1 and 2 did not come forward to contest the appeal and having slept over for more than three years and getting the appeal dismissed for default, now they filed the present application only to drag on the proceedings. Further they have not specifically stated anything about the illness of the first defendant and also not produced any document to show that he had taken treatment. Therefore, the appellate Court has rightly dismissed the application and there is no need to interfere with the order passed by the appellate Court.

5.Heard the learned counsel appearing on either side and perused the entire materials available on record.

6.A careful reading of the affidavit filed by the petitioners/defendants 1 and 2, it is seen that they have not stated anything specifically about the illness, treatment and other things. They have filed the affidavit simply saying that the first defendant was suffering from illness and that itself shows that for the purpose of filing the application, they invented the said reason. The appellate Court has not satisfied with the reasons stated by the defendants 1 and 2 and rightly dismissed the petition. Therefore, this Court does not find any perversity in the order passed by the appellate Court in dismissing I.A.No.189 of 2017 for filing an application to restore the appeal. Under these circumstances, this Civil Revision Petition is dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj

To

1.The Additional Sub Judge, Pudukkottai

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2.The District Collector,
Pudukottai.

3.The Revenue Divisional Officer,
Pudukottai.

+1 CC to M/s.N.BALAKRISHNAN, Advocate (SR-10674[F] dated 09/03/2020)

+1 CC to M/s.SPL.GP (SR-11113[F] dated 11/03/2020)

CRP (MD) No.2237 of 2019
09.03.2020

AP (19.03.2020) 3P 6C