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C.R.P. (NPD) (MD) No.1917 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2020

CORAM

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

C.R.P. (NPD) (MD) No.1917 of 2017

and

C.M.P. (MD) No.9884 of 2017

1.J.V.R.Amarnath

2.J.A.Hariprasath

: Petitioners

.. Vs ..

1.O.S.Dhanasekaran

2.J.A.Mani @ J.A.Manikandan

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Executable and Fair order, dated 13.03.2017 made in I.A.No.465 of 2014 in I.A.No.855 of 2007 in O.S.No.323 of 2007 on the file of the I Additional Subordinate Court, Madurai.

For Petitioners : Mr.P.Gunasekaran

For R1 : Mr.Saravanan

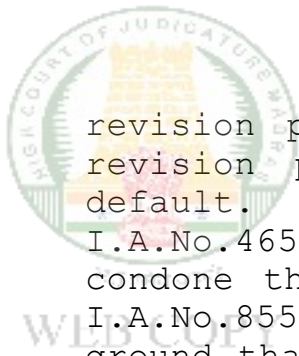
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ORDER

This Civil Revision Petition is directed against the order passed by the learned I Additional Subordinate Judge, Madurai in I.A.No.465 of 2014 in I.A.No.855 of 2007 in O.S.No.323 of 2007, dated 13.03.2017.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.The first respondent herein, as plaintiff, filed the suit in O.S.No.323 of 2007 before the I Additional Subordinate Court, Madurai, for recovery of a sum of Rs.2,00,000/- with interest due on a registered mortgage. It is admitted that the suit was decreed *ex parte* earlier and the same was restored on 25.02.2011 by filing a petition in I.A.No.855 of 2007. Thereafter, the revision petitioners filed an application in I.A.No.681 of 2011 to send the mortgage deed filed by the plaintiff for getting expert opinion. Thereafter, the matter was not listed. However, the



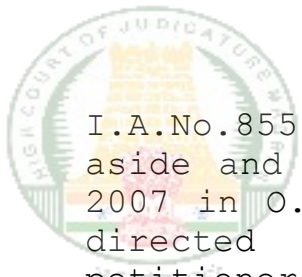
revision petitioners realised that the application filed by the revision petitioners in I.A.No.855 of 2007 was dismissed for default. Thereafter, the revision petitioners filed a petition in I.A.No.465 of 2014 in I.A.No.855 of 2007 in O.S.No.323 of 2007 to condone the delay of 901 days in filing the petition to restore I.A.No.855 of 2007. The application was dismissed mainly on the ground that the petitioners have not explained the delay and that they are not entitled to any indulgence. Aggrieved by the same, the above Civil Revision Petition is filed.

4.The stand taken by the revision petitioners is that the inordinate delay was not on the part of the petitioners, as the petitioners were in *bona fide* belief that the application filed by the petitioners in I.A.No.855 of 2007 was never listed and that they are not aware of any order dismissing the petition for default. It is further stated that the learned Judge after going through the paper, advised the petitioners to file a petition to restore I.A.No.855 of 2007, as the Court has passed the order dismissing the petition for default. But for lack of knowledge, it is stated that the petitioners could have filed a petition without any delay and it is further stated that the submissions of the petitioners were also acknowledged by the Presiding Officer, who heard the application.

5.This Court finds that there is no record to show that the petitioners had ever knowledge about the dismissal of I.A.No.855 of 2007 any time immediately after the petition was dismissed for default. The learned Counsel for the first respondents himself has submitted that the Presiding Officer had shown the docket entry indicating that I.A.No.855 of 2007 was dismissed for default.

6.The learned Counsel for the first respondent did not dispute the fact that the entry in 'B' diary was wrongly written, as if the petition in I.A.No.855 of 2007 was allowed. This gives a clear indication, as to the fact that the petitioners did not have any knowledge about the dismissal of I.A.No.855 of 2007 for default. In such circumstances, the delay of 901 days in filing a petition to restore I.A.No.855 of 2007 ought to have been condoned by referring to the reasons in the affidavit filed in support of this petition, as the lack of knowledge regarding the dismissal of I.A.No.855 of 2007 is admitted in this case. In such circumstances, this Court is unable to sustain the order of lower Court dismissing the application in I.A.No.465 of 2014 to condone the delay of 901 days in filing the petition to restore the application in I.A.No.855 of 2007.

7.Accordingly, this Civil Revision Petition is allowed and the order passed by the lower Court in I.A.No.465 of 2014 in



I.A.No.855 of 2007 in O.S.No.323 of 2007, dated 13.03.2017 is set aside and the application in I.A.No.465 of 2014 in I.A.No.855 of 2007 in O.S.No.323 of 2007 stands allowed. The learned Judge is directed to allow the application filed by the revision petitioners to restore I.A.No.855 of 2007.

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8.The learned Counsel for the petitioners and the learned Counsel for the first respondent fairly conceded that the suit is for recovery of money based on the mortgage. The scope of trial is very limited with regard to the genuineness and validity of the mortgage deed. Hence, a direction to dispose of the suit in O.S.No.323 of 2007 will be in the interest of justice. Accordingly, the learned I Additional Subordinate Judge, Madurai, is directed to dispose of the suit in O.S.No.323 of 2007, as expeditiously as possible, preferably within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

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Sub Assistant Registrar(CS)

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To

The I Additional Subordinate Judge, Madurai.

C.R.P. (NPD) (MD) No.1917 of 2017

22.07.2020

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