

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) No.1110 of 2018 and
CMP.No.5814 of 2018

T.Saravana Bhava
Panchavarman(died) ... Petitioner

Vs

Thillaigovindan(died)
1.Periyanayagam
2.Dharmalingam
3.Sivabagiyam
4.Mani
5.Panchanathan
6.Jothi
7.Kamatchi ... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of CPC against the fair and decretal order of the learned Principal Subordinate Judge, Cuddalore dated 16.09.2016 made in CMA.No.4 of 2015

For Petitioner : M/s.G.Sumitra
for Mr.W.M.Abdul Majeed

For Respondents
R1 to 6 : No appearance
R7 : Died

ORDER

This Civil Revision Petition is filed challenging the order passed in the civil miscellaneous appeal in CMA.No.4 of 2015 thereby confirming the order passed by the court below in IA.No.1905 of 2004 in IA.No.760 of 2002 in OS.No.400 of 1992 thereby dismissing the petition to restore the condone delay petition in filing the petition to set aside the exparte decree.

2. Though notice was served to all the respondents, no one appeared on behalf of the respondents before this Court in person or through pleader. The seventh respondent died and the legal heirs are already on record as respondents 4 to 6.

3. The petitioner is the legal heir of the original plaintiff. The original plaintiff filed suit for declaration and recovery of possession as against the respondents herein. On receipt of summons, the defendants in the suit were absent and as such they were set exparte and exparte decree was passed. On the application filed to set aside the exparte decree, it was allowed and when the matter was posted for trial, due to non appearance of

the deceased plaintiff, the suit was dismissed for default on 01.11.2000. The deceased plaintiff filed petition to restore the suit with the delay of 89 days.

4. On perusal of the affidavit filed in support of the condone delay petition, the petitioner could not able to attend the court on 01.11.2000 or to contact the counsel to get instruction. Therefore, due to his absence, the trial court dismissed the suit for default. Thereafter, he fell ill due to jaundice and as such there was delay of 89 days in filing the petition to restore the suit. In the meanwhile, the first defendant died and as such the deceased plaintiff had taken steps to implead the legal heirs of the deceased first defendant. There was delay in taking steps to implead the legal heirs and as such the petition to condone the delay in filing the restoration petition was dismissed for default for the reason that the plaintiff failed to take steps to implead the legal heirs of the deceased first defendant on 06.01.2004. Therefore, the deceased plaintiff filed petition to restore the condone delay petition. The said petition was dismissed and aggrieved by the same, the plaintiff filed appeal. In the meanwhile, the sole plaintiff died and the legal heirs of the deceased plaintiff preferred civil miscellaneous appeal with delay. The first

appellate court allowed the petition to condone the delay in filing the civil miscellaneous appeal and dismissed the appeal for the reason that the legal heir of the deceased plaintiff i.e. the present petitioner herein filed appeal with huge delay. Further stated that there is total negligence on the part of the petitioner herein in intimating the death of the first defendant before the court below and as such there is mischief on the part of the petitioner herein in conducting the case.

5. The learned counsel for the petitioner would submit that the suit is filed for declaration and recovery of possession and due to death of the sole plaintiff, there was delay in filing the appeal by the legal heir of the deceased plaintiff. When the first appellate court allowed the petition to condone the delay, again for the very same reason, appeal itself was dismissed. Therefore, the petitioner may be given one more opportunity to proceed with the suit.

6. On perusal of the order passed by the court below, the appeal was filed with delay by the legal heir of the deceased plaintiff. The suit is of

the year 1992 and only because of the conduct of the petitioner, the suit was not proceeded further. It is to be noted that after dismissal of the condone delay petition in filing the restore petition, the first defendant died and as such there was delay to take steps to implead the legal heirs of the deceased first defendant. However, the petitioner is the legal heir of the deceased plaintiff and as such there was a delay in filing the civil miscellaneous appeal. Considering the said facts and circumstances of the case, the petitioner may be given one more opportunity to proceed with the suit.

7. In view of the above, this civil revision petition is allowed and the order of the learned Principal Subordinate Judge, Cuddalore dated 16.09.2016 made in CMA.No.4 of 2015 is set aside on cost of a sum of Rs.5,000/- (Rupees Five Thousand only) to be paid by the petitioner to the respondents directly, within a period of two weeks from the date of receipt of copy of this order, failing which the order passed by this court shall stand automatically cancelled. On such compliance, the trial court is directed to dispose of the restoration petition in IA.No.760 of 2002 in OS.No.400 of 1992 on merits and in accordance with law within a period of four weeks

thereafter. Consequently, connected miscellaneous petition is closed. No order as to costs.

12.07.2021

lok

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No



WEB COPY



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok

To

- 1.The Principal Subordinate Judge,
Cuddalore
- 2.The Additional District Munsif,
Cuddalore



C.R.P.(NPD) No.1110 of 2018

WEB COPY

13.07.2021