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C.R.P. (NPD) .No.4565 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.4565 of 2015

and

M.P.No.1 of 2015

1.Selvam

2.Elumalai

.. Petitioners

Vs.

Veerasamy Konar (Deceased)

1.Arunthavam Ammal

2.Peranandan

3.Kannadasan

4.Ilayaperumal

5.Tamilselvi

6.Perasi

7.Elavarasi

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.11.2015 made in I.A.No.1354 of 2015 in O.S.No.240 of 2005 on the file of the Principal District Munsiff Court, Ulundurpet.



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For Petitioners : Mr.C.Munuswamy

For RR 1 to 7 : Mrs.R.Meenal

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 06.11.2015 made in I.A.No.1354 of 2015 in O.S.No.240 of 2005 on the file of the Principal District Munsiff Court, Ulundurpet.

2.The petitioners are defendants 5 & 6 in O.S.No.240 of 2005 on the file of the Principal District Munsiff Court, Ulundurpet. One Veerasamy Konar, who is the plaintiff, filed the said suit to remove the obstruction made by the 1st defendant and hand over the possession to the plaintiff, till the possession is handed over, to pay the mesne profit to the plaintiff. The petitioners filed written statement in the said suit. When the suit was posted for Trial, counsel for petitioners and other defendants reported no instructions. All the defendants were set exparte including the petitioners and exparte decree was passed on 07.12.2009, directing the 1st defendant to remove the obstruction and hand over proper possession to the plaintiff, till the possession is handed over, the mesne profit to be paid. The said Veerasamy Konar / plaintiff in the said suit filed E.P.No.135 of 2010 against



the 1st defendant to execute the decree. The 1st defendant entered appearance in E.P. and E.P. is pending. Pending E.P., the said Veerasamy Konar died on 15.09.2013. The respondents herein got impleaded themselves as respondents 2 to 8 in the E.P. While so, the petitioners filed I.A.No.1354 of 2015 to condone the delay of 569 days in filing the petition to set aside the abatement.

3. According to petitioners, they have filed two petitions to condone the delay in filing the petition to set aside the exparte decree and to set aside the exparte decree dated 07.12.2009. The decree holder is 1st respondent in E.P. and he died on 15.09.2013. The petitioners came to know the death of the plaintiff only on 01.09.2015 and hence, they filed application to implead the respondents herein as legal heirs of the deceased plaintiff and to set aside the abatement. The application to implead the respondents should have been filed within 90 days from 15.09.2013 and within 60 days thereafter, the petitioners ought to have filed application to set aside abatement. The petitioners came to know the death of the plaintiff only on 01.09.2015 and hence, delay of 569 days has occurred and filed the present I.A.

4. The respondents filed counter affidavit and denied all the averments and contended that the death of the plaintiff was widely published in the



newspaper and it cannot be said that petitioners came to know about the death of the plaintiff only on 04.09.2015. The petitioners entered appearance through counsel on 07.06.2006 itself. They have not given any reason for not contacting their advocate after filing the written statement and prayed for dismissal of the application.

5.Before the learned Judge, the 1st petitioner examined himself as P.W.1 and did not file any document. The respondents did not let in any oral and documentary evidence.

6.The learned Judge considering the averments in the affidavit, counter affidavit, evidence of 1st petitioner and materials placed before him, dismissed the I.A., holding that petitioners have not stated in the affidavit that they are in Bombay and not filed any document with regard to their employment in Bombay and there is no reason to condone the delay.

7.Against the said order of dismissal dated 06.11.2015 made in I.A.No.1354 of 2015, the petitioners have come out with the present Civil Revision Petition.



8. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 to 7 and perused the entire materials on record.

9. From the materials on record, it is seen that the petitioners have filed application to condone the delay of 569 days in filing the application to set aside the abatement. According to petitioners, they came to know about the death of the plaintiff only on 04.09.2015. In view of the same, the petitioners could not proceed with the application filed to condone the delay in filing the petition to set aside the exparte decree and to set aside the exparte decree dated 07.12.2009. The petitioners filed two applications to implead the respondents as legal heirs of the plaintiff and to set aside the abatement. In view of the delay in filing the petition, the present application is filed. A reading of the affidavit shows that the petitioners have not given any reason for the delay except stating that they came to know about the death of the plaintiff only on 04.09.2015. In the evidence, the 1st petitioner as P.W.1 has stated that the petitioners were working in Bombay Harbour and therefore, they do not know about the death of the plaintiff. The petitioners have not stated so in the affidavit filed in support of the present I.A. and also have not filed any materials to substantiate the same. The learned Judge considering



the averments in the affidavit and counter affidavit, dismissed the I.A., holding that petitioners have not given any reason for condoning the delay.

There is no error in the reasoning of the learned Judge.

10.For the above reason, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs. It is open to the petitioners to pursue the applications filed to condone the delay in filing the petition to set aside the exparte decree and to set aside the exparte decree dated 07.12.2009.

19.11.2021

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Index : Yes / No

Internet : Yes / No

To

The learned Principal District Munsiff,
Ulundurpet.



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V.M.VELUMANI, J.
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