



C.R.P. (PD) No. 1241 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1241 of 2019
and C.M.P. No.8006 of 2019

1. S.Sivakumar
2. Deepa

...Petitioners

Versus

S.Thulasivel

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A. No.515 of 208 in I.A. No.341 of 2015 in O.S. No.166 of 2014 on the file of the District Munsif, Gudiyattam, Vellore District, dated 21.01.2019.

For Petitioners : Mr. K.A.Ravindran

For Respondent : Mr. G.Vinodhkumar

ORDER

This Civil Revision Petition is preferred against the order in I.A. No.515 of 2018 in I.A. No.341 of 2015 in O.S. No.166 of 2014 passed by the learned District Munsif, Gudiyattam, Vellore District.

2. The respondent as plaintiff filed a suit in O.S. No.166 of 2014 for



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partition and separate possession of her 1/4 share in the suit property and for appointment of Advocate Commissioner for division and separate possession of the plaintiff's share. The suit is also for injunction, not to change the revenue records regarding the suit property in the name of fourth defendant. It is not in dispute that the suit was decreed ex-parte. However the revision petitioner filed an application to set aside the exparte decree. The said petition was allowed subject to payment of a sum of Rs.500/- as cost. Since the cost was not paid in time, as per the order of the lower Court, the petitioner filed an application in I.A. No.518 of 2018 to extend the time that was given for paying the cost. The said application was dismissed for want of merits. Aggrieved by the dismissal, this Civil Revision Petition is preferred by the defendants 2 and 4.

3. Learned counsel appearing for the revision petitioners submitted that the lower Court failed to consider the fact that no serious prejudice will be caused to other side by extending the time to pay cost. It is stated that the lower Court did not find any misconduct or gross negligence on the part of defendant. It is further submitted that there is no justification in refusing to exercise of discretion in favour of revision petitioner. The trial Court dismissed the petition to extend the time to pay the cost to set aside the *ex parte* order by citing delay. Though the petition to extend the time was filed immediately, the petition filed was returned for certain defects and the lower Court noticed that



there was delay in representation..

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4. This Court is unable to find any valid reason recorded by the lower Court to dismiss the petition to extend the time. In matters like this, the Court is expected to show some leniency so as to render substantial justice between parties. The application originally filed by the petitioners was to set aside the *ex parte* order. Having allowed the petition, the lower Court has refused to exercise its discretion to extend the time. The lower Court failed to consider the legal injury that may be caused to the revision petitioners. The petitioners have given sufficient reasons for not complying with the order even in the affidavit filed in support of the petition. The reasons stated by the petitioner for non-payment of cost within time cannot be ignored. This Court is unable to doubt the bonafides of the petitioners in prosecuting the application filed before the lower Court.

5. Learned counsel appearing for the revision petitioners undertakes to make the payment even today to the learned counsel appearing for the respondent. However, the learned counsel for the respondent submitted that he is not instructed to receive any amount from the petitioners. In these circumstances, it is open to the revision petitioner to pay the cost of Rs.500/- either to the respondent or his counsel before the lower Court. In case, the



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respondent or his counsel refuses to receive the cost, it is open to the petitioners to deposit the said amount to the credit of the suit in O.S. No.166 of 2014 on the file District Munsif, Gudiyattam, within a period of three weeks from the date of receipt of a copy of this order.

6. As a result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. Considering the fact that the suit itself is filed long back, the learned District Munsif, Gudiyattam, is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

22.12.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order
bkn



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The District Munsif, Gudiyattam.



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S.S.SUNDAR, J .,

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