



C.R.P.(NPD)No.3466 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3466 of 2014

1.Kirti Golechha

2.Sarala Golecha

3.M/s.Sagarchand Sujanmul (P) Ltd.

Represented by its Chairman Mr.Kirti Golechha

No.8, (Old No.104) Harrington Road

Chetpet, Chennai-600 031.

..

Petitioners

Vs.

1.Gaurav Golechha

2.Sandeep Golechha

3.Jagrati Golechha

4.Santosh Golechha

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 22.01.2014 made in I.A.No.83 of 2013 in O.S.No.7895 of 2010 on the file of the XVIII Additional City Civil Court, Chennai.

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For Petitioners : Mrs.Auxilia Peter

ORDER

(The matter is heard through “Video-conferencing/ Hybrid mode”)

Civil Revision Petition is filed against the fair and decretal order dated 22.01.2014 made in I.A.No.83 of 2013 in O.S.No.7895 of 2010 on the file of the XVIII Additional City Civil Court, Chennai.

2.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.7895 of 2010 on the file of the XVIII Additional City Civil Court, Chennai. The petitioners filed the said suit for declaration and permanent injunction. The said suit was dismissed for non-prosecution on 11.07.2012. The petitioners filed I.A.No.83 of 2013 to condone the delay of 227 days in filing the petition to restore the suit in O.S.No.7895 of 2010.

3.According to the petitioners, the 1st petitioner was directed to appear before the Court to give evidence on 11.07.2012. However, the



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date was wrongly noted down as 11.09.2012. When the 1st petitioner came to give evidence on 11.09.2012, he came to know that suit was dismissed for non-appearance on 11.07.2012 itself. Only because the Advocate Clerk noted wrong date, the 1st petitioner could not appear before the Court on 11.07.2012. The delay of 227 days occurred in filing petition to restore the suit as original application filed by the Advocate Clerk got misplaced among Court papers in the City Civil Court and the same could not be traced and prayed for condoning the delay.

4.The respondents 1 to 3 though entered appearance through counsel, did not file counter affidavit and they were set exparte.

5.The learned Judge considering the averments in the affidavit, dismissed the I.A. holding that the petitioners have not given any particulars with regard to filing of application by Advocate Clerk to restore the suit earlier and no valid reason has been assigned to condone the delay.



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6. Against the said fair and decretal order dated 22.01.2014 made in I.A.No.83 of 2013 in O.S.No.7895 of 2010, the petitioners have come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioners reiterated the averments in the affidavit filed in support of the above application. In addition to that, the learned counsel submitted that length of delay is not a criteria and the reason given by the petitioners is bonafide. A party to the suit must be given an opportunity and should not be thrown out at the threshold and prayed for allowing the Civil Revision Petition.

8. Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

9. From the materials on record, it is seen that the suit against the respondents 1 to 3 was dismissed on 11.07.2012. They filed application to condone the delay of 227 days in filing the petition to restore the suit.



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According to the petitioners, the suit was posted for recording evidence on behalf of the petitioners on 11.07.2012. The petitioners did not appear and suit was dismissed on that day. By mistake, the date of hearing was noted as 11.09.2012 instead of 11.07.2012. When the 1st petitioner appeared before the Court on 11.09.2012, he came to know that suit was dismissed on 11.07.2012 itself. The petitioners filed present I.A. to condone the delay of 227 days in filing application to restore the suit in April 2013. In the affidavit filed in support of the above application, the petitioners have stated that original application filed by the Advocate Clerk got mingled with other Court papers in the City Civil Court and hence, the delay has occurred. The petitioners have not given any details as to when the said application was filed and USR number given by the Court. The petitioners have also not mentioned whether they have taken any steps to trace the application and whether any complaint has been given in this regard. The affidavit filed by the petitioners is bereft of particulars and the petitioners have not given any valid reason to condone the delay for filing application. The reason given by the petitioners for the



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delay of 227 days in filing petition to restore the suit is not acceptable.

The learned Judge considering entire materials, dismissed I.A. by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

10.For the above reasons, the Civil Revision Petition stands dismissed. No costs.

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Index : Yes/No
Internet: Yes/No
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To

XVIII Judge
Additional City Civil Court
Chennai.



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V.M.VELUMANI,J.

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