

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.03.2021
CORAM :
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.R.P (NPD).No.4223 of 2018
and
Cmp.No.23189 of 2018

1.P.Subramani
2.G.Ramachandran

... Petitioners/Defendants 3 & 4

Versus

T.M.Sampath (died)
1.Bale Pandian @ Sellapandian
2.Vedammal ... Respondents 1 & 2/Defendants 1 & 2
3.T.S.Srinivasan
4.T.S.Balaji ... Respondents 3 & 4/Defendants 1 & 2
[R1 given up, R2 - Left]

Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the District Munsif Court, Thiruvotriyur to number the unnumbered I.A.SR.No.R4915 of 2018 in I.A.No.1449 of 2017 in O.S.No.29 of 2000 on the file of the District Munsif Court, Thiruvottiyur.

For Petitioners : Mr.Sudalaiyandi S.P
For Respondents : Mr.R.Jaganathan (for R3 & R4)
: R1 - Given up
: R2 - Left

ORDER

The Civil Revision Petition has been filed against the return of the unnumbered I.A.SR.No.R4915 of 2018 in I.A.No.1449 of 2017 in O.S.No.29 of 2000 on the file of the District Munsif Court, Thiruvottiyur. The Court returned the unnumbered I.A., by stating that it is not maintainable for impleading the legal heirs of the deceased/first respondents/plaintiffs.

2.The Court below returned the application on 24.10.2018, due to the following reasons stating that:

1.Condone delay petition and abatement
petition not filed.

2.Impleaded proposed party name not mentioned.

3.Fresh docket sheet to be enclosed.

In this regard, the learned counsel for the petitioners has referred a decision rendered by the Hon'ble Supreme Court of India, in the case of K.Rudrappa vs. Shivappa reported in AIR

2004 SCC 4346, wherein it has been held that there is no need to file petition for abatement and condone delay in filing such application. Though he referred a reported judgment of the Apex Court, in the present case, again the Court below returned the application on 28.11.2018 by stating the following reasons:-

- 1.Previous direction not complied, and
- 2.Fresh docket sheet to be enclosed.

Challenging the above said reasons stated by the Court below for returning the application, the present Civil Revision Petition is filed.

3.The sole contention of the petitioners is that they are the defendants in the suit, they were set exparte and an exparte order was passed against them on 15.12.2003. Therefore, they have filed an application in I.A.No.1449 of 2017, to condone the delay of 2173 days in filing the application to set aside the exparte order dated 15.12.2003 in O.S.No.29 of 2000. Pending the above application, the petitioners/defendants came to know about the death of the first respondents/plaintiffs. Therefore, they filed an application to implead the legal heirs of the deceased/first respondent but, the said application was returned by stating the reasons that no condone delay and abatement petition were filed. According to the plaintiffs, in view of the law laid down by the Hon'ble Apex Court in the Judgment of the case in K.Rudrappa vs. Shivappa reported in AIR 2004 SCC 4346, the order of the court below is not correct. At this juncture, it is useful to extract the relevant portion of paragraph No.10 of the above Judgment hereunder:-

"10. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. The case of the appellant before the District was that he was not aware of the pendency of the appeal filed by his father against the order passed by the Tehsildar. The father of the appellant died in June, 1994 and the appellant came to know about the pendency of appeal somewhere in September, 1994 when he received a communication from the advocate engaged by his father. Immediately, therefore, he contacted the said advocate, informed him regarding the death of his father and made an application. In such circumstances, in our opinion, the learned counsel for the appellant is right in submitting that a hyper-technical view ought not to have been taken by the District Court in rejecting the application inter alia observing that no prayer for setting aside abatement of appeal was made and there was also no prayer for condonation of delay. In any case, when separate applications were made, they ought to have been allowed. In our opinion, such

technical objections should not come in doing full and complete justice between the parties. In our considered opinion, the High Court ought to have set aside the order passed by the District Court and it ought to have granted the prayer of the appellant for bringing them on record as heirs and legal representatives of deceased Hanumanthappa and by directing the District Court to dispose of the appeal on its own merits. By not doing so, even the High Court has also not acted according to law."

4. On perusal of the above said judgment, it is clear that the objection on the basis of non filing of condone delay petition in filing the petition to bring the legal heirs and petition to set aside the abatement are technical objections and such objections should not come in the way of doing full and complete justice to the parties. The said law laid down by the Apex Court will apply to the present case as well.

5. Therefore, this Court direct the Court below to number the unnumbered I.A.SR.No.R4915 of 2018 in I.A.No.1449 of 2017 in O.S.No.29 of 2000 and dispose of the suit, within a period of three months from the date of receipt of a copy of this order.

6. With the above observation and directions, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

klt

To

1. The District Munsif Court, Thiruvottiyur.

+1cc to Mr. Sudalaiyandi, Advocate Sr.No.15929

C.R.P (NPD).No.4223 of 2018
and

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NR 19/04/2021