



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD)No.1489 of 2019

1.Joseph
2.Anthonysamy
3.Innasi
4.Arul
Sundram

... Petitioners/Petitioners/Plaintiff
Vs.

1.Diraviaraj
2.Chinnammal

... Respondents/Respondents/Defendant

Prayer : Civil Revision Petition filed under Section 115 CPC., to set aside the fair and decreetal order passed in I.A.No.766 of 2018 in O.S.No.246 of 2008 on the file of the Principal District Munsif Manaparai, Trichy District, dated 11.02.2019.

For Petitioners : Mr.A.Manikandan

ORDER

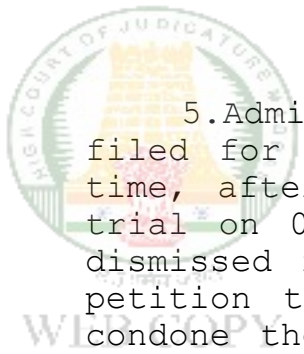
This civil revision petition has been filed to set aside the fair and decreetal order dated 11.02.2019 in I.A.No.766 of 2018 in O.S.No.246 of 2008 on the file of the Principal District Munsif Manaparai, Trichy District.

2.The facts of the case is that the petitioners herein filed a suit in O.S.No.246 of 2008 for permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property either by laying a underground pipelines in the suit property. The respondents herein are the defendants in the above said suit. The suit was posted on 01.12.2015 for hearing and the petitioners were not appeared. Therefore, the suit was dismissed for default on 01.12.2015. Hence, the petitioners filed a restoration petition along with condone delay petition to condone 942 days delay. The Court below dismissed the above said petition. Aggrieved over the same, the present civil revision petition filed.

3.The learned counsel for the petitioners would state that the revision petitioners have got good case on merits and the Court below ought to have taken pragmatic view in considering the delay condonation petition and instead of throwing the matter on technicalities, the Court below ought to have condoned the delay to enable the revision petitioners to contest the suit on merits. Thus, he would pray to set aside the impugned order.

4.Heard the learned counsel for the petitioner as well as the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>



5. Admittedly, the suit is of the year 2008. The suit has been filed for permanent injunction which was pending for a length of time, after commencement of trial. When the case was posted for trial on 01.12.2015, the petitioners did not appear and it was dismissed for default on the same day. The petitioners filed a petition to restore the suit with the condone delay petition to condone the delay of 942 days in filing the restoration petition stating that the first petitioner was suffering from jaundice and he was taken treatment in Kerala. Such a reason is not an acceptable reason for such huge delay and the learned Judge has rightly dismissed the I.A for condoning such a huge delay and therefore, by applying the principles in the judgment in **Esha Bhattejee vs. Managing Committee of Raghunathpur** reported in **2013 (5) CTC 547**, I do not find reason to interfere with the order passed by the learned Judge.

6. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

Principal District Munsif Manaparai, Trichy District

+1 CC to M/s.A.MANIKANDAN, Advocate (SR-5793[F] dated 17/02/2021)

C.R.P. (MD)No.1489 of 2019
15.02.2021

MJ (CO)

KB (16.04.2021) 2P 3C