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C.R.P. (PD) .No.3812 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3812 of 2016

Munirathinam Reddy (died)

1.Valliammal

2.Bharathi

3.Ramamoorthy

.. Petitioners

Vs.

1.Krishna Reddy

2.Vadivelu

3.Kannabiran

4.Jayaraman

5.Rajendran

6.Meenakshi Ammal

7.Indirani

8.Kamala

9.Shanmugam

10.Masilamani

.. Respondents



Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.10.2015 made in I.A.No.303 of 2014 in O.S.No.392 of 1990 on the file of the District Munsif Court, Arakkonam.

For Petitioner : Mr.G.Jeremiah

For RR 4, 10 : No appearance

ORDER

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

This Civil Revision Petition is filed against the fair and decreetal order dated 15.10.2015 made in I.A.No.303 of 2014 in O.S.No.392 of 1990 on the file of the District Munsif Court, Arakkonam.

2.The petitioners are plaintiffs 2 to 4 in O.S.No.392 of 1990. Originally the 1st plaintiff viz., Munirathinam Reddy filed the said suit for partition against the respondents. The 7th respondent filed written statement on 29.08.1991 and the same was adopted by the respondents 6 & 8 to 10. The 1st plaintiff died and petitioners were brought on record as plaintiffs 2 to 4 as per the order dated 22.08.2003 made in I.A.No.270 of 2003. The suit was dismissed for default on 06.01.2004. The petitioners filed application for



restoration of the suit. The said application was returned for complying certain defects pointed out by the Court. The petitioners did not comply the said defects and not represented the application in time. The petitioners represented the said application only on 16.06.2014 along with the present application in I.A.No.303 of 2014 filed to condone the delay of 2977 days in representing the application filed under Order IX Rule 9 of the Code of Civil Procedure. The affidavit filed in support of the above application was filed by the Junior Advocate of the counsel for petitioners. According to said Junior Advocate, the application filed under Order IX Rule 9 of the Code of Civil Procedure was returned and after taking return, it was kept in the Office of the Advocate and the same got mixed up with other papers and after search, it was found out and represented with the present petition to condone the delay and prayed for allowing the application.

3.The learned Judge ordered notice to the respondents therein. The notice sent to the respondents 1 & 6 were returned as they were dead. The learned Judge adjourned the application on number of occasions to enable the petitioners to take steps to bring the legal heirs of the respondents 1 & 6. The petitioners did not take any steps to bring the legal heirs of the respondents 1 & 6. The learned Judge after setting other respondents exparte, by the order



dated 15.10.2015 dismissed the said application holding that the reasons given by the petitioners is not sufficient for condoning the delay of 2977 days.

4. Against the said order of dismissal dated 15.10.2015 made in I.A.No.303 of 2014 in O.S.No.392 of 1990, the petitioners have come out with the present Civil Revision Petition.

5. Though notice has been served on the respondents 4 & 10 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

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

7. From the materials available on record, it is seen that the suit was dismissed for default on 06.01.2004. Even though the petitioners have filed application to restore the suit immediately, the same was returned by the Court for rectifying certain compliance. The said application was not represented in time. The petitioners have represented the application only on



16.06.2014 along with the present application to condone the delay of 2977 days. The affidavit filed in support of the present application was sworn to by a Junior Advocate in the Office of the counsel for the petitioner. This Court time and again had deprecated the practice of Advocate or Advocate's clerk in filing the application to condone the delay in filing the petition to restore the matter or setting aside the exparte order. In spite of the same, this practice is being continued. It is no doubt true that due to mistake of counsel for petitioners, the said application was not represented for more than 8 years and it is also the duty of the petitioners to verify with their counsel with regard to status of the suit, application filed by them and whether the suit was restored to file or not. The petitioners have not given any reason for not contacting their Advocate for more than 2977 days and they were not diligent enough to prosecute their case. Even in the present application, the petitioners have not taken any steps to bring the legal heirs of the deceased respondents 1 & 6, inspite of sufficient opportunities given by the learned Judge to the petitioners and I.A.No.303 of 2014 was dismissed as against the respondents 1 & 6.

8. It is well settled that the application for condoning the delay must be considered liberally and length of delay is not a criteria. The Court must see



whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In the present case, the reason given by the petitioners are not sufficient and acceptable. In view of the above, there is no error in the order of the learned Judge warranting interference by this Court.

9.In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

10.01.2022

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Index : Yes / No

Internet : Yes / No

To

The learned District Munsif,
Arakkonam.



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V.M.VELUMANI, J.
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