

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2021
pronounced on: 24.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.P.No.13333 of 2021
in CRP.No.918 of 2017

1.G.N.Saravanan
2.N.Vijayakumar .. Petitioners/Petitioners

Vs.

1.Varalakshmi
2.Natarajan
3.Kasturi .. Respondents/Respondents

Prayer: This Civil Miscellaneous Petition is filed under Order IX Rule 9 of CPC r/w. Section 151 of CPC to set aside the order dated 01.04.2021 and restore the above CRP.No.918/2017 Presented to this Court order Art 227 of Constitution of India to set aside the order and decreetal order dated 19/01/2017 made in IA 13434/2016 in O.S.No.5892/2011 on the file of VII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.S.G.Ramesh Cumar
For R3 : M/s.M.Manivasagam Associates
For R1 & R2 : No Appearance

O R D E R

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Petition has been filed to set aside the order dated 01.04.2021 and restore the above CRP.

3. Heard the learned counsel for the petitioners and respondents.

4. The learned counsel for the petitioners would submit that the petitioners herein have filed Civil Revision Petition against the decreetal order passed in I.A.No.13434 of 2016 in O.S.No.5892 of 2011 dated 19.01.2017. It is submitted that the respondents herein filed the Original Suit in O.S.No.5892 of 2011 for permanent injunction against the defendants therein from carrying out any kind of house construction activity in the suit schedule mentioned property and the petitioners herein

filed I.A.No.15550 of 2015 for rejecting the plaint and when the same was posted for arguments finally, the counsel for petitioner was not well and hence, he could not attend the case and the same was dismissed for default and the petitioners were set exparte in the main suit. The learned counsel would further submit that the petitioners herein filed I.A.No.13434 of 2016 to set aside the order dated 30.08.2016 and the same was dismissed by the trial Court against which, the Civil Revision Petition has been filed.

5. The learned counsel would further submit that notice of motion returnable by four weeks was ordered by this Court on 22.03.2017 and an order of interim stay was also granted in C.M.P.No.4565 of 2017. It is submitted that one of the petitioners' counsel colleague was infected with Covid-19 and all the members of his office underwent home quarantine during that relevant time and the petitioners came to understand that the CRP was dismissed on 01.04.2021 since there was no appearance. The learned counsel would further submit that the counsel for the petitioners came to know about the dismissal of CRP on 03.08.2021 when he appeared before the trial court for the suit hearing. It is also submitted that only after obtaining the web copy of the order dated 01.04.2021 it came to know about the listing of the CRP on 30.03.2021 and on 01.04.2021. The learned counsel would submit that unless the dismissal of CRP for non prosecution is set aside, the petitioner would be put to irreparable loss and hardship and sought for setting aside the order dated 01.04.2021 and restore the main CRP.

6. Per contra, the learned counsel for the respondent would contend that the petitioners are wantonly dragging the enquiry proceedings and even after given two chances, the petitioners' counsel has not come forward to argue the case. It is further contended that the petitioners have filed the restoration petition after 132 days and the petition ought to have been filed on 30.04.2021 within 30 days and since the petition to condone delay has not filed with the restoration petition. This petition to restore the C.R.P.No.918 of 2017 is also not maintainable and sought for dismissal of the petition.

7. The learned counsel for the petitioner would submit that the Apex Court in the Miscellaneous Application No.665 of 2021 in SMW(C).No.3 of 2020 directed that in computing the period of limitation for any Suit, Appeal, Application or proceedings the period from 15.03.2020 till 02.10.2021 shall stand excluded and the copy of the order was submitted before this Court. The learned counsel also would submit that the petition under section 5 of the Limitation Act was filed along with Restoration Petition and the same was not pressed on the instructions of registry since there is no delay. As submitted by the learned

counsel for the petitioners the petition under section 5 of the Limitation Act was filed on 10.08.2021 along with the Restoration Petition. Hence, considering the facts and circumstances of this petition, this Court in order to give an opportunity to the petitioner inclined to allow this petition and ordered accordingly.

8. In the result, this Civil Miscellaneous Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mpa

1. The VII Assistant Judge, City Civil Court, Chennai.

Copy to

2. The Section Officer,
Judicial Department,
High Court, Madras-104.

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RP(CO)
CT 09/03/2022