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CRP.No.3163 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3163 of 2018

1. S.J. Gopi,
2. S.J. Rani,
3. S.J.Baskar,
4. S.Premalatha,
5. V. Geetha

.. Petitioners

Versus

1. V. Manivannan,
2. Tamil Nadu Housing Board,
rep. by its Assistant Revenue Officer,
Besant Nagar Division, Chennai

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 01.03.2018 made in I.A. No.106 of 2017 in O.S. No.11935 of 2010 on the file of the XVII Additional Judge, City Civil Court, Madras.

For Petitioners : Mr.M. Aravind Subramaniam

For Respondent : Mrs. AL. Ganthimathi

**ORDER**

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This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 01.03.2018 made in I.A. No.106 of 2017 in O.S. No.11935 of 2010 on the file of the XVII Additional Judge, City Civil Court, Madras.

2. The petitioners herein are the plaintiffs and the respondents herein are the defendants in the original suit

3. The case of the petitioners is that the plaintiffs have originally filed the suit in C.S.No.486 of 2005 before this Court praying for specific performance of sale agreements dated 17.11.1993 and 18.11.1993 entered into between the plaintiffs and the 1st defendant and permanent injunction against the 1st defendant. While the suit is pending before this Court, it was transferred to the file XVII Additional Judge, City Civil Court, Madras for want of pecuniary jurisdiction in the year 2010 renumbering the said suit as O.S.No.11935 of 2010 wherein the said suit was dismissed for default by Judgment and Decree dated 28.03.2011 due to non appearance



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of the plaintiffs. After came to know the status of case, the plaintiffs have immediately filed the application in I.A.No.106 of 2017 before the Trial Court under Section 5 of Limitation Act, to condone the delay of 2285 days in filing the petition to restore the suit in O.S. No.11935 of 2010. After hearing both sides, the Trial Court dismissed the aforesaid application since, the sufficient cause for the delay was not explained by the plaintiffs/petitioners herein. Being aggrieved by the aforesaid dismissal order, the plaintiffs have filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioners would submit that pending the suit in O.S. No.485 of 2005 before this Court, the 1st respondent/1st defendant was served with summons in the aforesaid suit. After service of summon, the 1st defendant/1st respondent herein filed an application No.5350 of 2007 under Order VII Rule 11 CPC to reject the plaint the said application was dismissed by order dated 25.03.2008 of this Court. Being aggrieved over the aforesaid dismissal order, the 1st defendant/1st respondent has filed an appeal in O.S.A.No.204 of 2008 before the Division Bench of this Court. The same was dismissed by Judgment dated



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28.10.2014 with a cost of Rs.10,000/- payable to the Tamil Nadu Mediation and Conciliation Centre, attached to this Court. Pending the appeal in O.S.A No.204 of 2008, the suit in C.S. No.486 of 2005 for want of pecuniary jurisdiction was transferred to the Court below in the year 2010. However, the O.S.A. No.204 of 2008 was disposed only on 29.10.2014. In the meantime, the 1st plaintiff father died intestate on 27.11.2011 leaving behind the 1st plaintiff/1st petitioner herein and the proposed plaintiffs/petitioners 2-5 herein. After the disposal of the aforesaid appeal, the plaintiffs were under the impression that the Civil suit will be taken up for trial. But, the plaintiffs/petitioners came to know only on 29.06.2017, with regard to transfer of the suit from the Information Centre of this Court. Immediately, the plaintiffs/petitioners herein filed the application in I.A. No.106 of 2017 before the Court below to restore the suit in O.S. No.11935 of 2010 with a petition to condone the delay of 2285 days for filing the restore petition. There has been no dilatory tactics on the part of the plaintiffs/petitioners herein to drag on the suit proceedings. As the plaintiffs/petitioners did not have any knowledge about the transfer of the suit from the file of this Court to the file of Court below, they could not follow the suit proceedings. However, without considering the aforesaid



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facts and reasons stated by the plaintiffs/petitioners herein, the Trial Court dismissed the aforesaid application mechanically.

5. It has been submitted that the suit relief is substantial in nature and if the aforesaid suit is not restored on the file of the Court below, the plaintiffs/petitioners herein will be put to irreparable hardship besides loss of valuable property. Hence, he seeks to set aside the fair and decreetal order dated 01.03.2018 passed by the Trial Court.

6. The learned counsel for the 1st respondent would submit that the plaintiffs/petitioners herein have filed the application in I.A. No.106 of 2017 with a huge delay of 2285 days and they have not properly explained the reasons for the delay caused. Hence, the Trial Court rightly dismissed the application. Hence, no interference is required to the order dated 01.03.2018 of the Court below.

7. Heard both sides and perused the materials available on record.



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8. On a perusal of the records, it is seen that pending the suit in C.S. No.486 of 2005 before this Court, the defendants herein has filed an application 5350 of 2017 to reject the plaint. It was dismissed by this Court. Against the aforesaid dismissal order, they have filed an appeal in OSA No.204 of 2008. The same was dismissed by Judgment dated 29.10.2014 with a cost of Rs.10,000/- to be paid to the Mediation Centre attached to this Court. Even though the aforesaid suit transferred in the year 2010 itself to the Court below renumbering as O.S. No.11935 of 2010, the appeal in O.S.A. No.204 of 2008 pending before this Court was disposed of only in the year 2014. In the meantime, the 1st plaintiff's father who is the 2nd plaintiff in the suit, died. Hence, they have been unable to follow the suit proceedings before this Court. Further, substantial amount have been parted with by way of advance for the execution of Sale Deed with regard to the suit property pertaining to the 2nd defendant/2nd respondent herein. As this issue is not settled out between the parties, the suit is necessary to be restored for full fledged Trial to dispose the case on merit.

9. Under such circumstances, having considered the facts and



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circumstances of the case and in the interest of justice, this Court is inclined to allow this Civil Revision petition on condition of payment of Rs.5,000/- payable to the respondent's counsel within a period two weeks from the date of receipt of copy of this order. The Trial Court is hereby directed to dispose of the suit in O.S. No.11935 of 2010 after restoring it as expeditiously as possible.

10. In the result, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed if any. No costs.

31.10.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No

T.V.THAMILSELVI, J.



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Copy To:

1. The XVII Additional Judge, City Civil Court, Madras.
2. The Section Officer, V.R.Section
High Court, Madras.

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