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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP PD(MD) No.1066 of 2022 and
CMP(MD) No.4305 of 2022

K.K.Karuppasamy (Died)

1.Santhanakaruppasamy

2.M.Meenammal

3.K.Paranthaman

... Petitioners

Vs

1.V.G.Ramdoss

2.V.G.R.Vasuki

3.V.G.R.Latchan @ Lakshminarayanan

4.V.G.R.Kesirafthinath

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.535 of 2020 in O.S.No.66 of 2011, dated 06.04.2022, on the file of the District Munsif Court, Vadipatti.

For Petitioners	: Mr.M.Thirunavukkarasu
For R1	: Mr.M.Venkatesan
For R2 & R3	: Mr.N.Sathish Babu
For R4	: No appearance



ORDER

The petitioners, who are the defendants in O.S.No.66 of 2011, pending on the file of the District Munsif Court, Vadipatti filed this Civil Revision Petition as against the fair and decreetal order passed by the trial Court in I.A.No.535 of 2020, dated 06.04.2022.

2.The learned counsel appearing for the petitioners submits that the petitioners/defendants filed a suit in O.S.No.25 of 2011, as against the respondents/plaintiffs before the District Munsif Court, Vadipatti for the relief of declaration to declare that the petitioners are the owners of the suit schedule property and for declaring the sale deeds, dated 11.02.2008 and 26.06.2008 as null and void and for other reliefs. Subsequent to the institution of the above suit by the petitioners, the respondents herein filed a suit in O.S.No.66 of 2011 as against the revision petitioners for the relief of permanent injunction. The respective parties have also filed their written statements in both the suits. Issues were framed and the suits were posted for trial on 09.10.2017. Since both the parties did not appear, the suits were dismissed for default on 09.10.2017. The revision petitioners, who are the



plaintiffs in O.S.No.25 of 2011 has filed an application in I.A.No.328 of 2019 to restore the suit in time and the respondents herein/the plaintiffs in O.S.No.66 of 2011 has filed an application in I.A.No.535 of 2020 to condone the delay of 1015 days, in filing the petition to restore the suit. The learned trial Judge accepted the reasons and condoned the delay of 1015 days with a cost of Rs.2,000/-. Aggrieved over the same, the defendants in O.S.No.66 of 2011 have filed this present Civil Revision Petition.

3.The learned counsel appearing for the petitioners/defendants submits that the respondents/plaintiffs filed the suit in O.S.No.66 of 2011 on 06.04.2011 and these revision petitioners/defendants in the suit has also filed their written statements in the month of June 2012 and the suit was posted for trial on 09.10.2017 and on that date, the petitioners/defendants have not appeared. Therefore, the suit was dismissed for default on 09.10.2017. Hence, the respondents/plaintiffs have filed I.A.No.535 of 2020 on 20.08.2020 to condone the delay of 1015 days in filing the application to restore the suit. The reasons assigned for the delay is also against the Advocate that he failed to re-present and did not inform about the status of



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the suit. The trial Court accepted this ground and also condoned the delay without considering the Judgment of the Honourable Supreme Court, reported in **2015 (5) CTC 534** and also the Judgment of this Court reported in **2019 (3) MLJ 341**.

3.1.The learned counsel further submits that the revision petitioners have already filed a suit in O.S.No.25 of 2011 as against the respondents for the relief of declaration of title of the suit schedule property and also to declare the sale deed, dated 11.02.2008 and another document, dated 26.06.2008 about the agreement of deposit of title deeds executed by the defendants 2 to 4 are null and void. After institution of the above suit, the present suit in O.S.No.66 of 2011 is filed for the relief of bar injunction and when the suit was listed for trial on 09.10.2017, the respondents /plaintiffs failed to appear and therefore the suit was dismissed for default. The respondents put the blame on their counsel that the counsel failed to re-present the suit and also failed to inform them about the stage of the suit. However, they have contested the application filed by these revision petitioners in O.S.No.25 of 2011 in the year 2020 and also



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contested another suit in O.S.No.66 of 2011 through the same counsel. The respondents/ plaintiffs cannot simply blame the counsel and it is also their duty to verify with their counsel about the details of the suit. The delay of 1015 days is very huge. In view of the above judgment of the Honourable Supreme Court and this Court as cited supra, the order passed by the trial Court is liable to be set aside.

4.The learned counsel for the respondents/plaintiffs submits that the respondents are in occupation of the suit schedule property and if they are not provided with an opportunity, they would be dispossessed by the revision petitioners. The delay occurred is purely on the mistake of the counsel and the trial Court satisfied with the reasons assigned has straightly allowed the application with a cost of Rs.2000/- and now they are also prepared to pay a sum of Rs.25,000/- as cost, if this Court is inclined to interfere with the order of the trial Court.

5.This Court considered the rival submissions made and also perused the materials placed on record.



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6.The respondents/plaintiffs filed the suit in O.S.No.66 of 2011 for the relief of bar injunction, that too after filing of the suit by the revision petitioners in O.S.No.25 of 2011. When both the suits were posted for trial on 09.10.2017, the parties failed to appear before the trial Court and both the suits were dismissed for default on 09.10.2017. Admittedly, the petitioners and the respondents are also parties in another suit in O.S.No. 151 of 2016, pending on the file of the IV Additional District Munsif, Madurai, wherein, the trial has commenced on 12.07.2018 and in the proof affidavit filed in O.S.No.151 of 2016, a specific averment has been made with regard to the dismissal of O.S.No.66 of 2011. The respondent has also cross examined PW 1 through his counsel on 04.02.2019. Thereafter the application in I.A.No.535 of 2020 was filed on 20.08.2020 with a delay of 1015 days in filing the application to restore the suit.

7.Admittedly, the responsibility of the party is not end by handing over the case to the counsel. By following the decision of the Honourable Supreme Court in **2015 5 CTC 534** that the parties cannot simply throw the blame on the previous counsel, this Court in the case of



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Kirubasanam Kiruothuvin Saba, rep by its President, Dasayya Vs.T.

Ramanathan, reported in **2019 (3) MLJ 341** has held as follows:-

“The responsibility of the party is not end by handing over the case to the Counsel. Their duty continue to watch the proceedings. Litigant cannot be lethargic for years together and come and blame the lawyer to condone huge delay which occurred on their own fault. There is absolutely no materials available on record to show that there was communication form their Lawyer. No evidence whatsoever produced by the petitioner in this aspect. His own inaction for long time would not entitle him to get the Decree set aside by condoning huge delay of 536 days. Now the Courts are very liberal in approaching Section 5 of Limitation Act applications to advance the substantial justice. To exercise such liberal approach there must be reasonable ground. As stated above, absolutely, there is no merit in the application and there is no acceptable reasons found in the affidavit.”

8.In view of the above, this Civil Revision Petition is allowed and the impugned order passed by the learned District Munsif, Vadipatti in



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I.A.No.535 of 2020 in O.S.No.66 of 2011, dated 06.04.2022 is hereby set aside. However, it is always open to the respondents/plaintiffs to work out his remedy in the other suit, which is pending on the same issue between the parties in O.S.No.25 of 2011 and also they are at liberty to file a fresh suit, if any cause of action arise. No costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2022

Internet : Yes
Index : Yes / No
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To

The District Munsif Court, Vadipatti.



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B.PUGALENDHI, J.

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