



C.R.P. No.1362 of 2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.1362 of 2019

1.Mrs.Vijaya
2.Gunasekaran
3.Madhiyalagan

... Petitioners

Vs.

1.Ramachandran
2.Ashokan
3.Jayabal
4.Senthamarai
5.Kaaliammal
6.Mrs.Sumathi
7.Krishnan

... Respondents

PRAYER: The Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order made in I.A. No.73 of 2017 in A.S. No.67 of 2009 dated 13.02.2019 on the file of Principal Subordinate Judge, Tindivanam.

For Petitioners : Mr.V.Chandraprabu

For Respondents : Mr.S.Dawood Khan



ORDER

WEB COPY

The first defendant, judgment debtor in E.P. No.6 of 2012 in O.S. No.57 of 1995 on the file of District Munsif cum Judicial Magistrate, Vanur is the revision petitioner. The respondents herein/plaintiffs have laid a suit for declaration of their title and for recovery of possession. The suit was dismissed by the trial court following which the plaintiffs have preferred A.S. No.67 of 2009. In the first appeal, the first defendant chose to remain ex-parte. However, some of the other defendants who contested the matter, participated in the appeal and the first appellate court allowed the appeal and accordingly, decreed the suit. During the pendency of the appeal, the first defendant passed away and necessary steps were taken and the LRs of the first defendant were brought on record, but they chose not to participate in the appeal.

2. Subsequently, the plaintiffs have laid E.P. No.6 of 2012 for obtaining delivery of the property. In this proceedings, the legal heirs of the first defendant are stated to have entered appearance but subsequently did not participate in it and hence they were set ex-parte. On 07.07.2015, the execution court ordered delivery. At this juncture, the revision petitioners have approached the execution court with E.A. SR No.1682 of 2015 for setting aside the ex-parte order along



with another application for condonation of delay in filing the former application. The execution court dismissed both the applications for condonation of delay and also the application challenging the delivery. Challenging these orders, the revision petitioners have preferred C.R.P. Nos.3284 & 3285 of 2015 and this court vide its order dated 10.12.2020 dismissed C.R.P. No.3284 of 2015 but allowed C.R.P. No.3285 of 2015 on condition that the revision petitioners shall pay a cost of Rs.5,000/- to the other side for condonation of delay. That order to pay cost was not complied.

3. It is in this setting, the revision petitioners have preferred an application before the first appellate court for setting aside the ex-parte order passed against them along with an application in I.A. No.73 of 2017 for condoning the delay of 1206 days in preferring the same. The first appellate court promptly dismissed the said I.A. No.73 of 2017, which order is now under challenge in this revision.

4. Heard both sides.

5. The conduct of the revision petitioners makes a statement in support of the finding of the trial court. When the revision petitioners have got notice about the decree passed in A.S. No.67 of 2009 and when they got notice of E.P. No.6 of



2012 and at any rate, when they took out an application in E.A. No.73 of 2017 for condonation of delay to set aside the order of delivery passed by the execution court, but the revision petitioner chose not to pursue the route that they are now attempting to do and allowed time to go by. It is in this circumstances, the first appellate court has very rightly decided not to condone the delay in preferring I.A. No.73 of 2017 in A.S. No.67 of 2009. Somewhere the litigation should end and the conduct of the revision petitioners demonstrates that they want to exercise their procedural right to participate in the appeal in installments and according to their convenience. Law does not condone any such conduct on the part of the litigants. I find no reasons to interfere with the order.

6. In fine, the civil revision petition is dismissed. However, there is no order as to costs.

07.06.2023

Asr

To
The Principal Subordinate Judge, Tindivanam.

N.SESHASAYEE, J.,



WEB COPY



C.R.P. No.1362 of 2

Asr

C.R.P. No.1362 of 2019

07.06.2023