



WEB COPY



CRP No.3975 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3975 of 2016

1.C.Balamuralikrishnan

2.Minor B.Shri Harini

3.Minor B.Tharika

[Minors Rep. by their father/natural
guardian C.Balamuralikrishnan]

..Petitioners

Vs.

1.D.Sulochana

2.The Sub Registrar

Uthukuli,

Tiruppur District.

3.The District Registrar,

Karungalpalayam,

Erode District.

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.09.2016 made in I.A.No.173 of 2014 in O.S.No.375 of 2004 on the file of the District Munsif Court, Avinashi, by allowing the civil revision petition.

For Petitioners : Mr.N.Manokaran

For Respondents

For R1 : Mr.T.Balaji

For R2 & 3 : Mr.C.Sathish
Government Advocate



CRP No.3975 of 2016

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 06.09.2016 made in I.A.No.173 of 2014 in O.S.No.375 of 2004 on the file of the District Munsif Court, Avinashi, thereby dismissing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. The first respondent filed a suit for compulsory registration in respect of the suit property as against the deceased first defendant. In the said suit, the first defendant was set exparte and thereafter the suit was decreed by a judgment and decree dated 28.06.2011. On 02.09.2013, the deceased first defendant filed an application to set aside the exparte decree with the delay of 797 days in filing the petition to set aside the exparte decree. Pending the condone delay petition, the deceased first defendant died. Thereafter, the legal heirs of the deceased first defendant filed an application to condone the delay in filing the petition to set aside the abatement and implead them as legal representatives. All the applications were not numbered and while they were under SR stage, the Court below dismissed the condone delay application initially filed by the deceased first defendant on merits. Therefore, admittedly, on the date of passing an order in I.A.No.173 of 2014, the applicant was not alive and the said order was passed as against dead person.



CRP No.3975 of 2016

WEB COPY

3. It is also seen from the Execution application registered by Executing Court proceedings that the Court below had adjourned the matter for steps and thereafter dismissed. In the meanwhile, the petitioners filed a petition to set aside the abatement and bring the legal heirs on record along with a condone delay petition. Hence, this Court is inclined to set aside the order.

4. Accordingly, the order dated 06.09.2016 passed in I.A.No.173 of 2014 in O.S.No.375 of 2004 on the file of the District Munsif Court, Avinashi, is hereby set aside and the case is remitted back to the Court below for fresh consideration.

5. In the result, the civil revision petition stands allowed. The petitioners are directed to re-present the application to set aside the condone delay in filing the petition to set aside the abatement, set aside the abatement and bring on record the legal heirs and on receipt of the same the Court below is directed to dispose of the same on merits and in accordance with law. Thereafter, the Court below shall dispose of the condone delay in filing the petition to set aside the



CRP No.3975 of 2016

exparte decree on merits and in accordance with law. It is made clear that the period of pendency of the civil revision petition may be excluded while re-presenting the applications by the petitioners. There shall be no order as to costs.

03.01.2023

Speaking/Non-speaking order

Index : Yes/No

ata

To

The District Munsif Court, Avinashi.



WEB COPY



CRP No.3975 of 2016

G.K.ILANTHIRAIYAN.J.

ata

CRP.No.3975 of 2016

03.01.2023