



C.R.P. No. 2392 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2392 of 2023

and

C.M.P.Nos.14978 of 2023

1. Tmt. Lakshmi

2. Sivamani

3. Tmt. Mohanasundari

4. Prem Kumar

5. Sripriya

...Petitioners

.Vs.

1. R. Hemavathi

2. Minor R. Ashwin

D. Kasturi(deceased)

3. Thamarai Selvi

Rupa Selvi (deceased)

4. Pavala Selvi

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5. Jamuna Rani

6. Inba Selvi

M.D. Ravichandran(deceased)

7. S.M.A.Elayanar

8. S.M.A. Damodaran

...Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order dated 23.02.2023 made in I.A.No. 1 of 2022 in O.S.No.13465 of 2010 on the file of the III Additional City Civil Court, Chennai and pass orders.

For Petitioner : Mr. V. K. Rajagopal

ORDER

This petition is filed seeking a direction to set aside the order and decreetal order dated 23.02.2023 made in I.A.No. 1 of 2022 in O.S.No.13465 of 2010 on the file of the III Additional City Civil Court, Chennai and pass orders.

2. The facts of the case, is that the respondents 1 and 2 herein are the legal heirs of the deceased /7th plaintiff in the suit have filed the above

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I.A before the III Additional City Civil Court, Chennai under Section 5 of Limitation Act to condone the delay of 1249 days in filing the petition to setting aside the abatement caused by the death of deceased 7th plaintiff/M.D. Ravichandran and the same was allowed vide order dated 23.02.2023. Aggrieved over the same, the petitioners who are the respondents in the suit have come up with this petition.

3. The learned counsel for the petitioners submitted that there is no specific reason given to condone the delay of 1249 days in filing the petition to set aside the abatement, if there is a delay reason of each day delay is to be explained. The husband of the first respondent who is the 7th plaintiff in the above suit passed away in the year 2018 and only after expiry of 4 years only the above I.A was filed by the respondents herein and the Court below has erroneously allowed the above I.A.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.



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5. On a perusal of records it is seen that the petitioners herein has filed a C.R.P.No.2730 of 2015 connected to the O.S.No.13465 of 2010 and also filed CMP No.6217 of 2019 in the said C.R.P to implead the respondents herein who are the legal heirs of the deceased/M.D.Ravichandran. The only point raised by the petitioners herein before the Court below is that the respondents herein have received notice in CMP No.6217 of 2019 and they are aware of the pendency of the suit. Whilesso, why the respondents has filed the petition with a delay of 1249 days.

6. To arrive at a better conclusion that it is necessary to deal with two points. First point is whether the respondents deliberately with a malafide intention has filed the I.A with a delay of 1249 days and Secondly whether the respondents are necessary parties to the suit.

7. With regard to the first point it was made clear by the Court below that the respondents were not aware of the suit, as they are not parties to the suit and they had the knowledge about the pendency of the suit only



on 04.07.2022. Further more the learned counsel for the petitioner failed to produce the copy of the order passed in the impleading petition in CMP No.6217 of 2019 and he has produced only the petition copy. Hence the Court below has concluded that there is no evidence to show that the first and second respondents herein have received notice in the impleading petition and they were aware of the pendency of the suit.

8. With regard to second point there is no error in the finding of the Court below that the first and second respondents are the necessary parties to the suit and they have to be impleaded.

9. Hence, this Court is of the view that there is no infirmity in the Order passed by the Court below and the same is hereby confirmed. However, considering the facts of the case, this Court is inclined to impose a costs to the first and second respondents and they are directed to pay Rs.3,000/- to the petitioners within a period of three weeks from the date of receipt of a copy of this order.



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10. With the above directions, this Civil Revision Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

18.07.2023

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Index : Yes/No

Internet: Yes/No

To.

1. The Subordinate Judge, Subordinate Judge, Vaniampadi



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V.BHAVANI SUBBAROYAN,J.
Smn

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