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CMP.No.12393 of 2022

CMP.No.12393 of 2022
in
CMA.No.sr82688 of 2022

RMT.TEEKAA RAMAN, J.,

This matter has been brought before this Court by way of “For being mentioned”

2.Learned counsel for R1 to R3 would submit that in paragraph No.2 in Page No.8 of the order made in CMP.No.12393 of 2022 dated 10.03.2023, the trial Judge was inadvertently mentioned as “learned District Judge, Nagapattinam” instead of “learned Additional District and Sessions Judge, Mayiladuthurai”. Therefore, registry is directed to replace the following as paragraph No.2 in Page No.8 of the order made in CMP.No.12393 of 2022 dated 10.03.2023:

“2.In view of the above, the learned Additional District and Sessions Judge, Mayiladuthurai, is directed to dispose of the suit in O.S.No.14 of 2014, within a period of twelve weeks from the date of receipt of a copy of this order.”

20.03.2023

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Note: Registry is directed to carry out necessary modification and issue fresh order copy.



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CMP.No.12393 of 2022

RMT.TEEKAA RAMAN, J.,
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CMP.No.12393 of 2022
in
CMA.No.sr82688 of 2022

Dated: 20.03.2023



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CMP.No.12393 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2023

PRONOUNCED ON : 10.03.2023

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMP No.12393 of 2022
and CMA Sr. No.82688 of 2022

1. Uma Maheswari
2. Rajasudhan
3. Santhoshini
4. Pavunayaal

... Petitioners/Appellants

Vs.

1. NarenRajagopal
2. Roshni
3. Manimala

... Respondents/Respondents

Prayer in CMP No.12393 of 2022: This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, praying to condone the delay of 908 days in filing the CMA against the order made in IA.No.2 of 2019 in O.S.No.14 of 2014 dated 08.11.2019 on the file of the District Court, Nagapattinam.

Prayer in CMA Sr.No.82688 of 2022: This Civil Miscellaneous Appeal is



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filed under Order 43 Rule 1 of Code of Civil Procedure, against the decreetal order passed in I.A.No.2/2019 in O.S.No.14/2014 dated 08.11.2019 on the file of the District Court, Nagapattinam.

For Petitioners/
Appellants : Mr.D.Boopal

For Respondents : Mrs.K.Sumathi (for R1 to R3)

COMMON ORDER

This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 908 days in filing the Civil Miscellaneous Appeal, against the decreetal order passed in I.A.No.2/2019 in O.S.No.14/2014 dated 08.11.2019 on the file of the District Court, Nagapattinam.

2. The defendants have preferred this appeal. As the appeal is out of time, they have filed this petition, under Section 5 of the Limitation Act, to condone the delay of 908 days in preferring the appeal.

3. The learned counsel for the petitioners/appellants/defendants would



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contend that since their earlier counsel before the lower court had died and due to the covid-19 pandemic, there occasioned a delay and hence, prays for condoning the delay.

4. Respondents/Plaintiffs have filed counter affidavit

5. The learned counsel for the respondents/plaintiffs would contend that it is a partition suit. There was a mediation but mediation failed. Subsequently, during the trial, there was another mediation. However, the defendants / appellants have not cooperated and the case has been tried. They have not cross examined PW1 for more number of occasion, resulting in setting them exparte and their advocate informed 'no instructions'. Subsequently preliminary decree was passed. Also filed final decree proceedings and when the matter is posted again for final decree proceedings, they have filed the petition to set aside the exparte decree with a delay of 298 days in I.A.Nos.1 and 2 of 2019 and the learned District Judge has dismissed both the Interlocutory applications and hence, the learned counsel prayed for dismissal of this condone delay petition.



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6. Heard the learned counsel appearing on either side and perused the records.

7. The lower court records reveals that the respondents/plaintiffs have filed a suit in O.S.No.14 of 2014 on the file of the District Court, Nagapattinam, for partition. When the suit was posted for cross examination of PW1, their Advocate had made endorsement 'no instructions' from the defendants (appellants herein). Accordingly, they were set exparte on 17.11.2017 and subsequently, after completion of the legal formalities, exparte decree in the suit was granted on 17.01.2018.

8. Further, it is seen from the records that the chief examination of PW1 was taken on 14.06.2017 and for cross examination, posted to 01.07.2017 and the defendants took time and matter was adjourned from time to time for PW1 cross viz., 19.07.2017, 26.07.2017, 11.08.2017, 30.08.2017, 15.09.2017 and on 17.11.2017.

9. Thereafter, on 17.11.2017, the learned counsel for the appellants/defendants reported 'no instructions' and matter was again



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adjourned to 06.12.2017, 12.01.2018 and subsequently exparte decree was passed on 17.01.2018.

10. It appears that the plaintiffs filed final decree proceedings. After receipt of the notice in the final decree proceedings, in IA No.72 of 2018 on 12.06.2018, the appellants/defendants have filed IA Nos.1 and 2 of 2018 before the District Court to condone the delay of 298 days and to set aside the exparte decree. Both the petitions have been dismissed.

11. In this case, I.A.No.2 of 2019, is filed under Order 9 rule 13 to set aside the exparte decree. This was consequential to the dismissal of the condonation petition for the delay of 298 days and as against the order passed in Order 9 rule 13 dismissal, the present Civil Miscellaneous Appeal is filed. Here again there is delay of 908 days.

12. From the above narration of events, I find that the appellants/defendants who are the petitioners herein have only intended to drag on the proceedings. They have not chosen to cross examine PW1. For several years, the matter is pending and subsequently due to the endorsement



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made by the defendants' counsel they were set *exparte* and again sufficient opportunity was given before passing the *exparte* decree. Thereafter, also they have not filed any application. Only when IA No.72 of 2018 is filed on 12.06.2018 for passing of the final decree, after service of notice, they have chosen to file the petition to condone the delay of 298 days for setting aside the *exparte* decree. The same is also dismissed and the main petition to set aside the *exparte* order is also dismissed and here again, they have committed default of 908 days.

13. A perusal of the affidavit does not make out any sufficient cause. Hence, I am of the considered view that it is a clear attempt made by the defendants/appellants to prevent the plaintiffs from enjoying the fruits of the decree, by getting the apportionment of shares in the final decree.

14. With this view of the matter, I am not satisfied with the reasons assigned and accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, the Civil Miscellaneous Appeal stands rejected at the SR stage itself.



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10.03.2023

Index : Yes/No

Neutral Citation : Yes/No.

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RMT.TEEKAA RAMAN, J.,

After pronouncement of the order, the learned counsel for the respondents seeks direction to the trial Court to dispose of the suit, since, the suit is of the year 2014.

2. In view of the above, the learned District Judge, Nagapattinam, is directed to dispose of the suit in O.S.No.14 of 2014, within a period of twelve weeks from the date of receipt of a copy of this order.

10.03.2023

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To

1. The Special Sub Court No.II,
Motor Accidents Claims Tribunal,
Salem.

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2. The District Judge,
Nagapattinam.

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RMT.TEEKAA RAMAN,J.,

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Pre-delivery order in
CMP No.12393 of 2022
and CMA Sr. No.82688 of 2022

10.03.2023