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C.R.P.No.3515 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM

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

C.R.P.No.3515 of 2019

1. V.Ramathan
2. V.Balaji
3. V.Ravichandran
4. V.Venugopal

... Petitioners

Vs.

1. C.Madhaiyan
2. C.Duraisamy
3. D.Shanthi
4. D.Vijay Babu
5. Usha Rani
6. S.Duraisamy
7. A.P.Nachimuthu
8. The Registrar of Companies,
Tamil Nadu (Coimbatore Region)
Stock Exchange Building,
Trichy Main Road,
Singanallur, Coimbatore.
9. Punjab National Bank
by its Branch Manager,
Advaith Ashram Road,
Salem – 636 004.

10. K.Venkatachalam

... Respondents



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Prayer :- Civil Revision Petition filed under Section 115 of C.P.C., to allow the Civil Revision Petition setting aside the fair and decreetal order of the learned First Additional District Munsif, Salem, dated 16.04.2019 in I.A.No.375 of 2018 in O.S.No.312 of 2007 and to order the said I.A. as prayed for.

For Petitioners : Mr.T.M.Hariharan

For Respondents

For R6 : Mr.M.S.Krishnan
Senior Counsel
For M/s.Sarvabhauman Associates
For R8 : Mr.C.Sathish
Government Advocate

For R1 to R5, R7

R9 & R10 : No appearance

ORDER

The Civil Revision Petition has been as against the fair and decreetal order dated 16.04.2019 passed by the learned First Additional District Munsif, Salem, in I.A.No.375 of 2018 in O.S.No.312 of 2007, thereby dismissing the petition filed to condone the delay of 1364 days in representing the petition to restore the suit.



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2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit in O.S.No.312 of 2007 for declaration and injunction. In view of the settlement arrived between the parties, the said suit was dismissed as settled out of Court and the petitioners also received half of the Court fees paid on the plaint. Thereafter, the petitioners filed petition to restore the suit with delay of 1564 days in filing the application to restore the suit. It was returned for want of some compliance. Thereafter it was not re-presented in time and it was re-presented with the delay of 1364 days. Hence the petitioner filed an application in I.A.No.375 of 2018, to condone the delay in re-presenting the petition. Since the trial Court dismissed the application, the petitioner filed this present Civil Revision Petition.

3. The learned counsel appearing for the petitioners submitted that only under the influence of then minister and on threat, the petitioners without settling the issue withdrawn the suit as settled out of Court. Therefore, only after the said minister lost his power and after forming the new government, the petitioners able to file the application to restore the



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suit. However, it was returned and due to their threat it was not re-presented.

Therefore, there was a delay of 1364 days in re-presenting the petition to restore the suit. However, the Court below dismissed the application on the ground that the restoration application itself is not maintainable.

3.1. He further submitted that the application filed by the petitioners is very much maintainable. In support of his contention, he relied upon the judgment reported in **2006 (3) SCC 699** in the case of ***Jet Plywood P Ltd., and anr Vs. Madhukar Nowlakha and ors.***, in which the Hon'ble Supreme Court of India held that there is no doubt in the absence of a specific provision in the Code of Civil Procedure providing for the filing of an application for recalling of an order permitting withdrawal of a suit, the provisions of Section 151 of the Code of Civil Procedure can be restored to in the interest of justice. The principle is well established that when the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power of the Court can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. Hence, he prayed to allow this Civil Revision Petition.



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4. Per contra, the learned Senior Counsel appearing for the sixth respondent submitted that the matter has been settled out of Court on the memo filed by the petitioners as such, the suit was dismissed as settled out of Court and half of the Court fees was returned to the petitioners. In the meanwhile after the period of 1567 days, the petitioners filed petition to restore the suit along with condone delay petition. It was returned for some compliance and again the petitioners failed to re-present the said application in time. Hence, they filed the present application to condone the delay in re-presenting the petition.

4.1. He further submitted that immediately after withdrawal of the suit, the petitioners filed Company Petition in C.P.No.36 of 2008 before the Company Law Board, Chennai, for the very same relief and the same was dismissed. Further the petitioners set up some fictitious persons and filed another Company Petition in C.P.No.93 of 2009. While pending the company petition, it was challenged by the respondents 1 to 5 in C.A.No.5 of 2010 questioning the very maintainability of the company petition on the



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ground that the petitioners in C.P.No.93 of 2009 are not shareholders of the company as such they cannot maintain the petition. It was allowed by an order dated 07.08.2015, thereby dismissing the Company Petition in C.P.No.93 of 2009.

4.2. He also submitted that the complaint lodged by the second petitioner in Crime No.34 of 2011 on the file of the Inspector of Police, Central Crime Branch, Salem, as against the respondents, was quashed by this Court in Crl.O.P.No.2019 of 2013 by an order dated 02.09.2014. Aggrieved by the same, the petitioners preferred a Special Leave Petition in SLP (Crl)No.415 of 2015 and the Hon'ble Supreme Court of India by an order dated 12.10.2017, dismissed the Special Leave Petition. After dismissal of the Special Leave Petition, the petitioners filed the application to restore the suit. Therefore, it cannot be permitted and the Court below rightly dismissed the application. Hence, he prayed for dismissal of the present Civil Revision Petition.

5. Heard Mr.T.M.Hariharan, learned counsel appearing for the petitioners, Mr. M.S.Krishnan, learned Senior Counsel appearing for the



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sixth respondent and Mr.C.Sathish, learned Government Advocate appearing for the eighth respondent.

6. The petitioners filed suit as against the respondents for the following relief :-

“(a) declaring that the plaintiffs are directors of the Premier Roller Flour Mills Limited.

(b) declaring that the Forms, returns or any other papers filed by the defendants 1 to 5 before defendant No.8 (Registrar of Companies) are illegal and null and void and not binding on the plaintiffs and the company.

(c) restraining the defendants 1 to 5 from disturbing the plaintiff peaceful possession and enjoyment of the suit property by way of permanent injunction.

(d) restraining the defendants 1 to 5 from transferring the shares to any other third persons by way of permanent injunction awarding cost of the suit.

(e) granting such other and further relief or reliefs that the Hon'ble Court deems fit and proper in the circumstances of the case and thus render justice.”

Thereafter, the said suit was dismissed as settled out of Court by the



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judgment and decree dated 17.04.2008.

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7. On a perusal of decree revealed that the petitioners filed memo stating that the suit may be dismissed as settled out of Court. Therefore, the trial Court recording the said memo, dismissed the suit as settled out of Court. The trial Court also ordered refund of 50% of the Court fee to the petitioners. Thereafter, the petitioners filed Company Petition in C.P.No.36 of 2008 before the Company Law Board, Chennai for the following reliefs :-

“(i) investigate the affairs of the company

(ii) to declare that the alleged actions of the respondents are oppressive

(iii) to restore the shareholding of the petitioners by rectifying the register of members and also the original board of directors

(iv) to set aside the sale of the property to R7

*(v) to annul the appointment of R2 to R6 as directors
and*

*(vi) to delete the returns and forms filed by R2 and
others.”*

Therefore, both the reliefs sought in the suit and the company petition are



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more or less one and the same. However, before the Company Law Board, the petitioners had lost their case.

8. In fact, other set of persons also filed another Company Petition in C.P.No.93 of 2009 for the following reliefs :-

(i) To direct the department to appoint one or more inspectors to investigate the affairs of the company under Section 235 and 237 of the Act.

(ii) To declare that the actions of the respondent are oppressive to the petitioners and direct them to set right the misdeeds immediately by bringing back the original shareholders, original Board of directors and by returning land they possessed/or sold out and by returning the buildings and machineries they had demolished soled whatsoever.

(iii) To declare and pass an order in the interest of the company and the shareholders setting aside the registration of the property of M/s.Premier Roller Flour Mills Ltd., registered/executed on 04.01.2008 under Document No.59 of 2008 page 4 Volume 1 in favour of M/s.ARRS Mega Mall Pvt. Ltd.

(iv) To pass an order against the transfer of shares



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of the petitioners in favour of the respondents 2 to 6 and change in the register of members to that effect to be null and void and direct the company to rectify the register of members in order to incorporate the names of the petitioners in the register of members accordingly.

(v) To direct respondents 8 to 11 to furnish their written explanations for the queries raised to them as their reply in crucial in deciding the instant case.

(vi) To declare that the appointment of respondents 2 to 6 as directors is null and void board meetings and general meetings if any conducted by the respondents and the filing of any returns whatsoever by the respondents are null and void and to pass an order directing the company to conduct the general meetings by giving proper notice to the shareholders.

(vii) To pass an order directing the Registrar of Companies, Coimbatore to remove all the illegal and wrong returns filed by M/s Duraisamy & Co.

(viii) To direct the respondents herein to return back all the properties, land, factory, machines and buildings of the company they illegally possessed and to return all the money they siphoned of from the company and render proper accounts; and



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(ix) *To pass any other order deem fit and proper in the circumstances of the case.”*

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9. It seems that the petitioners set up those parties and filed another Company Petition. While pending the above Company Petition, the respondents 1 to 5 filed an application in C.A.No.5 of 2010, questioning the very maintainability of the company petition on the ground that the petitioners in C.P.No.93 of 2009 are not shareholders of the company as such they cannot maintain the petition. The said application was allowed by an order dated 07.08.2015, thereby dismissing the Company Petition in C.P.No.93 of 2009.

10. It is also seen that on the complaint lodged by the second petitioner, FIR has been registered in Crime No.34 of 2011 on the file of the Central Crime Branch, Salem, as against the sixth respondent and others. However, this Court by an order dated 02.09.2014 in CrI.O.P.No.2019 of 2013, quashed the said FIR as against the sixth respondent and others. Aggrieved over the same, the petitioners preferred a Special Leave Petition in



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S.L.P.No.(CrI.)No.415 of 2015 and the same was also dismissed by the Hon'ble Supreme Court of India, on 12.10.2017. Immediately after dismissal of the Special Leave Petition, the petitioners herein filed petition to restore the suit, which was dismissed as settled out of Court, with the condone delay petition to condone the delay of 1567 days in filing the restoration petition. It was returned for want of some compliance. However after taking return, it was not re-presented within the time stipulated by the Court below and it was re-presented with the delay of 1364 days.

11. On a perusal of the affidavit filed in support of the condone delay petition revealed that physical as well as fiscal difficulties, problems, troubles, pinpricks, tortures and continuous threats faced by the petitioners, they could not able to file the petition in time. As stated above, simultaneously, the petitioners filed Company Petition, complaint etc., and went up to the Hon'ble Supreme Court of India till the final order passed on 12.10.2017. Therefore, the petitioners failed to state sufficient cause for the huge delay. Hence, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.



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WEB COPY 12. Accordingly, the Civil Revision Petition stands dismissed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The First Additional District Munsif,
Salem.



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G.K.ILANTHIRAIYAN, J.

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