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C.R.P.No.3396 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

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

C.R.P.No.3396 of 2017
and C.M.P.No.15839 of 2017

1. Malaiyappan
2. Anthony Ammal

... Petitioners

Vs.

Singaram (a) Jayaraj

... Respondent

Prayer :- Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and final order dated 25.07.2017 made in I.A.No.584 of 2016 in I.A.No.453 of 2008 in O.S.No.41 of 2007 on the file of the learned Principal Subordinate Judge, Villupuram.

For Petitioners : Mr.G.Ethirajulu

For Respondent : No appearance

ORDER

The Civil Revision Petition has been filed as against the fair and final order dated 25.07.2017 passed by the learned Principal Subordinate Judge, Villupuram, in I.A.No.584 of 2016 in I.A.No.453 of 2008 in



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O.S.No.41 of 2007, thereby dismissing the petitioner filed by the petitioners to condone the delay of 721 days in filing restore application.

2. The petitioners are the defendants in the suit filed by the respondent seeking damages. On receipt of the suit summon, the petitioners were failed to appear before the trial Court as such, they were set exparte and the suit was decreed on 31.03.2008. In pursuant to the decree, the respondent filed execution petition in E.P.No.92 of 2008. On receipt of the notice from the execution proceedings, the petitioners filed petition to set aside the exparte decree with condone delay petition to condone the delay of 167 days. The said condone delay petition was allowed in I.A.No.452 of 2008. However, the petition to set aside exparte decree in I.A.No.453 of 2008 was dismissed for default. In order to restore the set aside exparte petition, the petitioner filed petition for restoration petition along with the condone delay petition to condone the delay of 721 days. Since the trial Court dismissed the said petition, the petitioners filed the present Civil Revision Petition.

3. Heard Mr.G.Ethirajulu, learned counsel appearing for the



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petitioners. Though notice served on the respondent and name printed in the cause list, no one is appeared in person or through counsel.

4. On a perusal of affidavit filed in support of the condone delay petition revealed that they were under impression that after condone delay petition was ordered, the petition to set aside exparte order was also ordered. Therefore, they did not take any steps to proceed with the said application. That apart, the respondent filed suit claiming damages as against the petitioners. Therefore, the petitioners may be given one more opportunity to defend the suit in proper manner.

5. In view of the above discussion, the order dated 25.07.2017 passed by the learned Principal Subordinate Judge, Villupuram, in I.A.No.584 of 2016 in I.A.No.453 of 2008 in O.S.No.41 of 2007, is hereby set aside, and the exparte decree dated 31.03.2008 is also hereby set aside. The trial Court viz., the learned Principal Subordinate Judge, Villupuram, is directed to dispose the main suit within a period of six months from the date of receipt of a copy of this Order.

6. With the above directions, the Civil Revision Petition stands



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allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

27.01.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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1. The Principal Subordinate Judge,
Villupuram.



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G.K.ILANTHIRAIYAN, J.

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