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C.R.P.No.137 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.137 of 2023

S.Habibullah (died)

1.Sabeera Begam

2.Mohamed Askar Ali

3.Anees Fathima

... Petitioners

Vs

1.V.Sarathambal

2.M.Jamaludeed

... Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 05.09.2019 in unnumbered I.A. Of 2019 in I.A.No.28 of 2018 in O.S.No.64 of 2011 on the file of Sub Court, Dharamapuri.

1 / 6



C.R.P.No.137 of 2023

For Petitioners : Mr.B.Mohan

ORDER

The Civil Revision Petition is filed against the order dated 05.09.2019 passed in the unnumbered Interlocutory Application in I.A. of 2019 in O.S.No.64 of 2011 on the file of the Sub Court, Dharapuram.

2. The revision petitioners are the legal heirs of the deceased plaintiff, who instituted a Suit for Specific Performance. The Suit was dismissed for default on 19.07.2017 due to the non-appearance of the plaintiff. During the year 2018, the plaintiff filed Interlocutory Applications in I.A.Nos.28 and 29 of 2018 to restore the Suit and by condoning the delay in filing the application to restore the Suit. The condone delay petition was allowed by the Trial Court on a condition to pay costs. The condition imposed by the Trial Court in the Interlocutory Applications in I.A.Nos.28 and 29 of 2018 was not complied with by the plaintiff and consequently, the



C.R.P.No.137 of 2023

Interlocutory Applications in I.A.No.28 and 29 of 2018 stood dismissed.

Again, the plaintiff filed an Interlocutory Application, which is unnumbered, for the purpose of extending the time to comply with the condition imposed in the Interlocutory Applications in I.A.Nos.28 and 29 of 2018. The said Interlocutory Application was rejected by the Trial Court on the ground that under Section 148 of Civil Procedure Code, the petition filed beyond 30 days after the order of dismissal on 27.03.2019 is not maintainable.

3. Challenging the said docket order dated 05.09.2019, the revision petitioners have chosen to file the present Civil Revision Petition under Article 227 of the Constitution of India, after a lapse of about 3 years from the date of passing of the docket order.

4. The original plaintiff died and the revision petitioners before this Court have slept over their right and not pursued the Suit vigilantly. The Suit was instituted in the year 2011 for Specific Performance, which was



C.R.P.No.137 of 2023

dismissed for default on 19.07.2017. The plaintiff filed Interlocutory Applications, which were allowed by the Trial Court and the plaintiff failed to comply with the condition stipulated and thus, the order passed on 19.07.2017 was confirmed. Though the unnumbered Interlocutory Application was rejected by the Trial Court on 05.09.2019, the revision petitioners have filed the present Civil Revision Petition after 3 years.

5. The learned counsel for the revision petitioners states that the revision petitioners, who all are the legal heirs of the original plaintiff were not aware of the proceedings. However, such a blanket statement, which is unsubstantiated, cannot be considered by this Court for the purpose of restoring the Suit, which was instituted in the year 2011. In the event of restoring the Suit, which was dismissed for default in the year 2017, the same would undoubtedly cause prejudice to the interest of the opposite party and thus, this Court is not inclined to consider the relief sought for in the present Civil Revision Petition.



C.R.P.No.137 of 2023

6. Accordingly, the order dated 05.09.2019 passed in the unnumbered Interlocutory Application in I.A. of 2019 in O.S.No.64 of 2011 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.137 of 2023 is dismissed. No costs.

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25.01.2023

Speaking Order

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C.R.P.No.137 of 2023

S.M.SUBRAMANIAM, J.

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C.R.P.No.137 of 2023

25.01.2023