



C.R.P.(NPD)No.3995 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.3995 of 2019

A.Ezhilan (Deceased)

1.E.Suchitra

2.E.Rajakumari

3.E.Vignesh (Minor)

(minor represented by his mother and
natural guardian E.Suchitra)

4.Gandhimathi

.. Petitioners

VS

1.M/s.Perfect Benefit Fund Limited,
having their office at
No.50, Halls Road, Egmore,
Chennai – 600 008.

(R1 is said to have been wound up)

2.M.L.Rajendran

3.Krishnakumar

Proprietor, Pace Builders,
Having business at
No.B 58, B Block, Anna Nagar,
Chennai – 600 040.

4.Mannappan,

Proprietor, R.C.Constructions,
Having business at No.1,
Postal Colony, 4th Street,
West Mambalam,
Chennai – 600 033.



C.R.P.(NPD)No.3995 of 2019

WEB COPY

5.M/s.Firm Foundation Housing P. Ltd.,

Carrying on business at
No.47, Anna Nagar,
Chennai -600 040.

6.Ragunandan Prabhakar

7.Y.P.Ravi

(Respondents 2, 4, 6 & 7 were already set exparte
in the above CMP. No notice need to be served)

8.Official Liquidator,
High Court, Madras.

.. Respondents

(R8 impleaded suo motu as a party respondent to
represent the 1st respondent as per order dated 11.07.2023
in CRP(NPD)No.3995 of 2019)

Petition filed under Section 115 of Civil Procedure Code to set
aside the fair and decreetal order dated 13.02.2019 made in CMP.No.890
of 2015 in A.S.No.09 of 2005 on the file of the IV Addl. Judge, City Civil
Court, Chennai.

For Petitioners : Mr.M.Arunkumar

For Respondents : Mr.S.P.Mano Bharth
for Mr.S.R.Sundar
for Official Liquidator
R1 – Not ready notice
Mr.B.Rajkumar Ashok Singh (for R3)
Mr.J.Jawahar (for R5)
R2, R4, R6 & R7 - Exparte

ORDER

A suit in O.S.No.6500 of 1999 was presented for the following
reliefs:- (i) a declaration that the first defendant is only having a life



C.R.P.(NPD)No.3995 of 2019

interest in respect of the first floor of the schedule mentioned property;

(ii) execution of the mortgage deed with the second defendant, development agreement with the defendants 3 to 7 as nonest in law, void-ab-initio, null and void not binding on the plaintiff; (iii) permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff and dispossessing the plaintiff except under due process of law from the schedule mentioned property and (iv) directing the defendants to pay the costs of the suit.

2.The suit ended in a dismissal on 17.08.2004 after contest. Against the said judgment and decree, an appeal was filed in A.S.No.9 of 2005. The said appeal was dismissed for default on 03.02.2007. To restore the appeal, an application was moved in CMP.No.890 of 2015 in A.S.No.9 of 2005. There was a delay of 2789 days in filing the application to restore the appeal.

3.The reason given for the delay is that the plaintiff who had filed the appeal had died and the counsel representing the plaintiff/appellant did not handover the papers to the legal representatives. They would state that only after they engaged new counsel, they came to know of the fate of the appeal. They filed an application to restore the appeal together with an application for condonation of delay.



C.R.P.(NPD)No.3995 of 2019

4.The said application came to be dismissed against which the present revision has been preferred.

5.I heard Mr.M.Arunkumar, learned counsel appearing for Sampathkumar Associates for the petitioners, Mr.B.Rajkumar Ashok Singh, learned counsel appearing for third respondent and Mr.S.P.Mano Bharath, learned counsel appearing for Mr.S.R.Sundar for Official Liquidator.

6.The litigation involves vital rights in an immovable property. The original plaintiff is no more. His legal representatives are fighting to save the property. As has been consistently held by this Court and the Supreme Court, a party can at best engage a lawyer in a regular appeal and it is the duty of the lawyer to prosecute the matter. Unfortunately on the death of the sole appellant, the suit had been dismissed for default.

7.The plea that the legal representatives took desperate efforts to find out the status of the appeal suit and were not able to do so because the lawyer for the deceased appellant did not co-operate with them sounds plausible to me. However, taking into consideration the fact that the delay is huge and nearly seven years have gone by from the date of dismissal, I am inclined to impose a cost of Rs.1,00,000/-. I am inclined to condone the delay since vital rights to an immovable property is



C.R.P.(NPD)No.3995 of 2019

involved. I am inclined to impose a cost of Rs.1,00,000/- on the appellant in order to condone the humongous delay of 2789 days.

8.Mr.M.Arunkumar, learned counsel appearing for the petitioners appeared before me today and has handed over a demand draft bearing No.681191 dated 17.07.2023 for a sum of Rs.1,00,000/-. The cost is payable to the Official Liquidator and the draft has also been taken in the name of the Official Liquidator.

9.Mr.S.P.Mano Bharath, learned counsel representing the Official Liquidator has received the demand draft. Consequently the cost having been paid, the condition imposed has been complied with, I am inclined to condone the delay. The delay is accordingly condoned.

10.The learned IV Additional Judge is requested to number the application to restore the appeal and allow the same. He shall fix a date for commencement of arguments in the appeal on 03.10.2023 and dispose of the appeal on or before 22.12.2023.

11.With the above directions, this Civil Revision Petition is allowed. No costs.

20.07.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs



WEB COPY



C.R.P.(NPD)No.3995 of 2019

V. LAKSHMINARAYANAN,J.

VS

To

The IV Additional Judge,
City Civil Court, Chennai.

C.R.P.(NPD)No.3995 of 2019

20.07.2023