



C.R.P(MD).No.1182of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1182 of 2023

and

C.M.P(MD).No.5718 of 2023

N.Balasubramaniam(Died)

1.Meenambal

2.B.Nirmal Kumar

3.B.Somugi Priya

... Petitioners/Petitioners/Defendants
Vs.

D.Balamani

... Respondent/Respondent/Plaintiff

PRAYER:- This Civil Revision Petition has been filed under Section 115 of CPC, to set aside the fair and decreetal order made in I.A.No.94 of 2021 in O.S.No.61 of 2013 by the Principal Sub-Court,Palani dated 14.06.2022.

For petitioners : Mr.D.Venkatesh

For respondent : Mr.R.Muruga Boopathy

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the fair and decreetal order made in I.A.No.94 of 2021 in O.S.No.61 of 2013 on the file of the Principal Sub-Court,Palani dated 14.06.2022.



2.The petitioners are the defendants who have been impleaded in O.S.No.61 of 2013 after the death of the original defendant namely, N.Balasubramaniam.

3.The suit has been filed by the respondent on 18.03.2013 to recover the amount lent by the respondent to the Late.N.Balasubramaniam on 17.09.2010 which was secured by the promissory note for a sum of Rs.5 lakhs. Late.N.Balasubramaniam is the husband of the first petitioner and the father of the other two petitioners herein. The petitioners were set ex-parte and an ex-parte decree came to be passed on 24.06.2019. Pursuant to which, the respondent/plaintiff has filed E.P.No.77 of 2020 before the Sub Court, Pollachi. The petitioners herein have filed I.A.No.94 of 2021 on 04.01.2021 to set aside the ex-parte decree passed on 24.06.2019 along with the application to condone the delay of 530 days in filing the above application under Order IX Rule 7 of CPC. The Court below has rejected the application filed by the petitioners by the following observations:-

“ 5.Point:-

Only if sufficient cause is purforth before the court petition under Section 5 of the Limitation Act could be sustainable. The petitioners in this petition have mentioned the reason that the counsel for the petitioners has not informed about the hearing date and the delay is mentioned



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to have been occurred. This Court find that the reason stated is not a sufficient cause as mentioned by the petitioners in the petition. Hence, the petition is liable to be dismissed.”

4.I have considered the argument advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

5.Reading of the affidavit filed by the petitioners in support of the above application merely blames the counsel. Therefore, although, the impugned order is cryptic it cannot be faulted. However, facts remains that the suit was against Late.N.Balasubramaniam, who was died in 2016.

6.In my view, to meet the ends of justice, the impugned order declining to condone the delay of 532 days can be set aside on terms by directing the petitioners to deposit the principal amount of Rs.5 lakhs that was allegedly paid by the respondent/plaintiff (Decree Holder) to Late.N.Balasubramaniam to the credit of O.S.No.61 of 2013 before the Principal Sub Court, Palani within a period of 6 weeks from the date of receipt of a copy of this order. Subject to such compliance, I.A.No.94 of 2021 shall stands allowed and the execution proceedings initiated by the respondent/plaintiff before the Sub Court, Pollachi in E.P.No.77 of 2020 shall be kept in abeyance. In case, the petitioners complies with the order, the Trial Court shall frame the issues and proceed with the trial and dispose the suit within a period of 6 months.



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7. With the above directions and observations, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

28.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

- 1.The Principal Sub-Court,
Palani.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

dss

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