



C.R.P(MD).No.581 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.581 of 2023

and

CMP(MD)No.2709 of 2023

1.E.Malayandi

2.E.Paramasivam

3.E.Dharmar

4.E.S.Rajkumar

... Petitioners/Petitioners 1,3,4&6/
Appellants 1,3,4&6/Defendants

Vs.

1.M.N.Aravindan

2.M.S.Dasaradharaja

3.Lalithadevi

... Respondents/Respondents/Respondents/
Plaintiffs

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2020 in A.S.No.(Unnumbered)2020, (CNR.No.TNTH030000552020), on the file of the learned Subordinate Judge Court, Theni, dated 31.01.2023 and begs to allow the same as prayed for.

For petitioners : Mr.K.Vamanan

ORDER

This petition has been filed to set aside the fair and decreetal order passed in I.A.No.1 of 2020 in A.S.No.(Unnumbered)2020, (CNR.No.TNTH030000552020), on the file of the learned Subordinate Judge



Court, Theni, dated 31.01.2023

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2.The petitioners has filed this petition against the impugned order dated 31.01.2023 in I.A.No.1 of 2020 in unnumbered A.S.No..... of 2020 filed for condoning the delay in 2505 days in filing the appeal against the judgment and decree of the Trial Court dated 29.01.2013 in O.S.No.416 of 2016 before the District Munsif, Theni. The relevant portion of the order reads as under:-

“5.Per contra, it was contended by the respondent that the above application is not maintainable either in law or in facts and liable to be dismissed and further the suit in O.S.No. 416 of 2006 has been decreed on 29.01.2013. As against the said judgment the petitioners have disturbed and interfered within the peaceful possession and enjoyment over the suit property of the respondent and hence a notice has been issued to the petitioners on 23.05.2019 and the same was received by the petitioners and on 03.06.2019 a reply notice have been sent by making false contentions. Hence, the respondent has filed a contempt petition to arrest the petitioner through court amin in E.P.No.37 of 2019. The reasons stated by the petitioner for the delay of 2505 days is not acceptable in nature. Further the petitioner has not given the particulars regarding the treatment taken for dengue fever. Since the reason stated by the petitioner is not acceptable in nature the above application is liable to be dismissed. The respondent/plaintiff has filed a suit in O.S.No.416 o 2006 seeking the relief of permanent and Mandatory injunction in respect of the suit properties on the file of District Munsif, Theni. The said suit was decreed on 29.01.2013. Now, the present appeal has been filed by the petitioner/defendants along with an application to condone the delay of 2505 days in filing the appeal. It was stated by the petitioner/defendant



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that after getting the copy of decree and judgment all confusion arose in their family regarding the filing of appeal and all of them suffer from virus fever which was developed as dengue fever and thus they could not be able to file the appeal with in the time. On perusal of the affidavit filed by the petitioner it I found that out of 6 petitioners, 2 of them died and 4 petitioners have preferred the appeal before this Court. The reason stated in the affidavit filed in support of this Petition says that all the petitioners was suffering from dengue fever and was unable to contact their counsel immediately and confusion arose in their family regarding the filing of the appeal. Unsubstantiated reasons or reasons vaguely stated, cannot be a ground to condone and enormous delay in filing the appeal. The Rule is to file the appeal with in the period of limitation. The reasons for condoning the huge delay must be based on sound legal principles. Mechanical approach in condonation of delay is impermissible.. In the case on hand there is a delay of 2050 days in filing the appeal. Thus huge delay cannot be condoned based on certain flimsy or unsubstantiated reasons. Even if one petitioner is not well, there are other three petitioners who all were in a position to file an appeal. Further no medical records have been produced to prove that they were under medical treatment. Further, the delay of 2505 days have not been explained properly and the reasons stated are neither candid nor convincing.

6.In view of the above said reasons, and also the fact that the petitioners has not established any acceptable reason for the purpose of condoning the delay of 2505 days this Court is not inclined to condone the delay and thus same is liable to be dismissed.”

3.Though the petitioners were not required to give details of the delay on day-to-day basis nevertheless the petitioners were expected to give the sufficient reasons to the Court to exercise the discretion under Section 5 of the Limitation Act. The delay in filing the appeal is huge running to 2505



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days and no proper explanation was given by the petitioners for condoning the delay.

4.In my view, the order passed in I.A.No.1 of 2020 in A.S.No. (Unnumbered)2020, (CNR.No.TNTH030000552020), on the file of the learned Subordinate Judge Court, Theni, dated 31.01.2023 does not warrant any interference by this Court.

5.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

13.03.2023

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

To

- 1.The Subordinate Judge Court,
Theni.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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