



C.R.P.(MD).No.1277 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD).No.1277 of 2023

and

C.M.P.(MD).No.6290 of 2023

1.A.Alagesan

2.S.Sathiyaraj

... Petitioners

Vs.

1.The Assistant Electrical Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Keelaiyur Village, Melur Taluk,
Madurai District.

2.The Assistant Divisional Electrical Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Melur, Madurai District.

3.The Divisional Electrical Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Thirupalai, Madurai District.

4.S.Ragunathan

... Respondents



C.R.P.(MD).No.1277 of 2023

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed by the District Munsif Court, Melur in I.A.No.2 of 2020 in O.S.No.396 of 2014 on 07.10.2021.

For Petitioners :Mr.S.Santhakumaresan

For Respondents :Mr.R.Balakrishnan for R4

ORDER

This Civil Revision Petition filed to set aside the fair and decreetal order passed by the District Munsif Court, Melur in I.A.No.2 of 2020 in O.S.No.396 of 2014 on 07.10.2021.

2. The petitioner herein is the plaintiff in O.S.No.396 of 2014, before the District Munsif Court, Melur. The suit has been filed for the relief of declaration and for permanent injunction to restrain the respondents (defendants) from interfering with the electricity service connection and Well in Survey No.673/7I in Saruguvalayapatti Village, Melur Taluk, Madurai District. After filing the suit, the written statement of the respondent was taken on the file.



C.R.P.(MD).No.1277 of 2023

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3. The case was listed for trial on several dates. However, the first petitioner and the second petitioner, who are the plaintiffs, filed the appeal. Therefore, on 25.10.2019, the same was dismissed for non-prosecution. Under these circumstances, the petitioners filed application to condone the delay of 50 days to restore the suit on the file of the District Munsif Court, Melur, which has been dismissed by the Trial Court. The relevant portion of the order reads as under:

"b) On perusal of records it is found that the main case had been posted for trial on several occasions on 11.02.2019, 18.03.2019, 04.06.2019, 24.06.2019, 30.08.2019, 23.09.2019 and on 25.10.2019. Though the petitioners side contend that the first petitioner had been under treatment for complications in heart surgery, as rightly contended by the respondent No.4 side, the petitioners have not produced any medical proof or other document in support of the said contention. The petitioners side have also not produced specific particulars as to the date or period of alleged treatment. It is also pertinent to note that no reason had been mentioned as to



why the second petitioner had not appeared before the Court. It is also worth mentioning that inspite of several opportunities as mentioned earlier, the petitioners side had not commenced trial for a period of nearly 7 months. There is no reason as to why the petitioner/plaintiffs had not conducted the case during the said period. Not only that but also the delay of 50 days in filing the restoration petition has also not been explained by the petitioners side with proper documentary or other proof. Therefore this Court is not inclined to allow this petition.

In the result, this petition is dismissed. No costs."

4. It is submitted that the impugned order is liable to be interfered with. It is submitted that the first petitioner is aged about 78 years and the second petitioner is an illiterate and that the first petitioner has to take care of his wife and daughter and hence, he did not appear before this Court on the date when the suit was dismissed.



C.R.P.(MD).No.1277 of 2023

5. The learned counsel for the petitioners would submit that no prejudice will be caused, if the suit is restored to the file and the delay is condoned.

6. On the other hand, the learned counsel for the respondent would submit that the relief in the suit is confined only to the electricity connection for the Well in the land in Survey No.673/7I, whereas the petitioners have not called for any declaration that the land and the Well in Survey No.673/7I belongs to the petitioners. Hence, even otherwise, if the suit is restored, no useful purpose would be served by way of rejoinder.

7. It is the intention of the petitioners to establish that the right over the land in Survey No.673/7I and that the electricity connection was given to the petitioners. during the lifetime of the first petitioner's father and they have been enjoying the said connection. It is further submitted that the Well was also dug up by the first petitioner's grand father.



C.R.P.(MD).No.1277 of 2023

8. I have considered the arguments advanced by the learned counsel for the petitioners.

9. The delay in filing the application for restoring the suit to be filed before the Court is only 50 days. The Court has to be liberal while considering the fact that the relief is only for declaration and for injunction. However, the petitioners are liable to pay costs. The petitioners have taken adjournments on several occasions.

10. Considering the above, I am inclined to allow this Civil Revision Petition by directing the petitioners to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent within a period of four weeks from the date of receipt of a copy of this order. On such payment, the suit shall stand restored to the file of the District Munsif Court, Melur. Considering the fact that the suit is of the year 2014, the learned District Munsif, shall endeavour to dispose of the suit on merits and in accordance with law, preferably within a period of nine months thereon. The petitioners are directed to co-operate with the trial Court.



C.R.P.(MD).No.1277 of 2023

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11. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.06.2023

NCC :Yes / No

Index :Yes / No

sbm

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C.R.P.(MD).No.1277 of 2023

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