



C.R.P(MD)Nos.2229 & 2230 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)Nos.2229 & 2230 of 2014

and

M.P(MD)No.1 of 2014

C.R.P(MD)No.2229 of 2014

Dhason (Died)
Rassalian (Died)

1.Rajamony
2.Selvaraj
3.Abraham
4.David
5.Thanka Bai
6.Shylaja
7.Vijila
8.Sanila
9.Robin

... Petitioners

Vs.

1.Samuel Dhas
2.Johnson (Died)
3.Muthayyan
4.Thomson

Francis (Died)

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C.R.P(MD)Nos.2229 & 2230 of 2014

5.Marthammal

6.Vinod

7.Bazil Raj

8.Sanil Raj

9.Vinfer Raj

... Respondents

(Respondents 7 to 9 are brought on record as legal heirs of the deceased second respondent vide Court order dated 30.03.2023 made in C.M.P(MD)Nos.950 to 952 of 2018 and C.M.P(MD)Nos.953 to 955 of 2018 in C.R.P(MD)Nos.2229 and 2230 of 2014)

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to allow the civil revision petition by setting aside the order passed in I.A.No.815 of 2012 in O.S.No.155 of 2009 dated 22.04.2014 on the file of the Principal District Munsif Court, Kuzhithurai.

For Petitioners : Mr.R.T.Arivukumar
for Mr.R.Manimaran

For R-1, R-3,
R-4 & R-7 to R-9 : Ms.Gayathri
for Ms.J.Anadhavalli

For R-5 & R-6 : No appearance
R-2 : Died

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Dhason (Died)
Rassalian (Died)

1.Rajamony

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PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to allow the civil revision petition by setting aside the order passed in I.A.No.816 of 2012 in O.S.No.155 of 2009 dated 22.04.2014 on the file of the Principal District Munsif Court, Kuzhithurai.

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For Petitioners : Mr.R.T.Arivukumar
for Mr.R.Manimaran

For R-1 to R-4 : Ms.Gayathri
for Ms.J.Anadhavalli

For R-5 & R-6 : No appearance

COMMON ORDER

These Civil Revision Petitions are filed assailing the order passed by the learned Principal District Munsif Court at Kuzhithurai in I.A.Nos.815 and 816 of 2012 in O.S.No.155 of 2009 by the petitioners / defendants. For the sake of convenience, the parties herein are referred as arrayed in I.A.Nos.815 and 816 of 2012.

2. I.A.No.815 of 2012 was filed to condone the delay of 699 days in restoring I.A.No.297 of 2010, which was filed to set aside the *ex parte* order passed on 11.11.2009 in O.S.No.155 of 2009 and the said I.A was dismissed for default on 13.07.2010.

3. I.A.No.816 of 2012 was filed to enlarge the time as far as in filing I.A.No.815 of 2012 to restore the original suit. Counter was also filed in both the I.A.Nos.815 and 816 of 2012 before the learned Principal District



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Munsif Court at Kuzhithurai. After elaborately dealing with both the interlocutory applications, the learned Trial Court dismissed both the I.As filed under Sections 148 and 151 of the Code of Civil Procedure, 1908.

4. Heard Mr.R.T.Arivukumar for Mr.R.Manimaran, learned Counsel for the revision petitioners and Ms.Gayathri for Ms.J.Anandhavalli, learned Counsel for the respondents at length. The learned Counsel for the revision petitioners elaborately pressed each and every other grounds taken by the Civil Revision Petition.

5. However, the learned Counsel for the respondents vehemently argued that the Civil Revision Petition ought to be dismissed relying on the following judgments:

(i) In a similar issue dealt with by the Hon'ble Supreme Court of India in the case of ***D.Gopinathan Pillai Vs. State of Kerala and Another reported in (2007) 2 SCC 322*** dated 15.01.2007, the relevant portion of which is extracted as follows:



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“5. We are unable to countenance the finding rendered by the Sub-Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the Court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub-Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the Courts have miserably failed to comply and follow the principle laid down by this Court in a catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub-Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal.”

(ii) In a similar issue dealt with by the Hon'ble Supreme Court of India in the case of ***H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Another reported in (2015) 1 SCC 680*** dated 15.01.2007, the relevant portion of which is extracted as follows:



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“25. We, therefore, find total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the respondents in RFAs Nos.268-88 of 2012 and 319 of 2012 is also set aside and shall stand dismissed.”

6. The learned Trial Court has elaborately dealt with both the I.A.s and no documents were marked on the side of the petitioners / defendants. However, the respondents / plaintiffs have entered into the witness box and have marked three documents as R1, R2 and R3 and all those three documents were pertaining to O.S.No.554 of 2008, a parallel case which was conducted by these petitioners / defendants in the I Additional District Munsif Court at Kuzhithurai. Though the petitioners contended that one of them is being aged about 95 years and the other two about 100 years of age and also the second and third respondents are being paralysed, the learned Trial Court meticulously dealt with their pleadings and submissions and the



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respondents / plaintiffs have diligently entered into the witness box and deposed the evidence and marked necessary documents to prove that, at that particular point of time, the petitioners / defendants herein were not at all bed-ridden and they were hale and healthy, to such an extent that they conducted a parallel suit which was preferred by them in the I Additional District Munsif Court, Kuzhithurai and the learned Trial Court has remarkably brought all those facts in the impugned order which is usefully extracted as follows:

“7. The Respondents / plaintiffs agitated that the petitioner / third defendant wantonly neglected this suit because he is appearing and following yet another case in O.S.No.554 of 2008. The respondents / plaintiffs strongly contended that petitioner / defendants are appearing regularly in the other case in I Additional District Munsif Court, Kuzhithurai and they purposefully neglected this case. Exhibits R1 to R3 have been marked on the side of Respondents / plaintiffs. The petition filed by the petitioner / third defendant as I.A.No.749 of 2010 in O.S.No.554 of 2008 in I Additional District Munsif Court, Kuzhithurai dated 30.09.2010 has been brought to the notice of this Court. The



certified copy of the said petition and order has been marked as Exhibit R1. It shows that this petitioner / third defendant filed affidavit in O.S.No.554 of 2008 on 30.09.2010. Hence he was not admitted in the hospital on those days. Another certified copy of petition and order in I.A.No.40 of 2012 in O.S.No.554 of 2008 has been marked as Exhibit R2 in which these petitioners / defendants 1 to 3 are petitioners. The above said petition and affidavit has been filed on 12.01.2012 before filing of five months prior to these petitions. These exhibits Exhibits R1 and R2 clearly prove that this petitioner / third defendant and his brothers have conducted yet another case in I Additional District Munsif Court, Kuzhithurai but willfully neglected the proceedings of this case.

9. Considering Exhibits R1 and R2 and other Court records this Court finds that the petitioners / defendants are not vigilante enough to proceed the case. They were negligent in filing of each and every petition. They sought for condonation of 699 days delay without giving any proper reason. It shows that they are purposefully neglecting the proceedings of this case with ulterior motive. As per amended CPC, each and every day of delay has to be explained to the satisfaction of this Court. But the petitioners / defendants has not given proper explanation for the single day of delay. Further this Court finds that the petitioners / defendants have



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been prosecuting yet another case in I Additional District Munsif Court, Kuzhithurai in those 699 days. It shows that they are not interested to follow this case. This Court finds that the petitioner / defendants filed these petitions only because the respondent / plaintiff initiated EP proceedings. Hence this Court does not find any merit in these petitions.”

7. On perusal of the records, it is clear that the original suit is of the year 2009 and by the strength of the stay which has been granted by this Court in this Civil Revision Petition, the plaintiffs are meticulously prevented by the defendants from adjudicating the case before the learned Principal District Munsif Court, Kuzhithurai and dispose the same.

8. Considering the facts and circumstances of this case, this Court is of the considered view that the pendency of these two civil revision petitions before this Court had caused inordinate delay of more than 13 years in adjudicating the said original suit in O.S.No.155 of 2009. Hence, this Court is not inclined to interfere with the order passed diligently by the learned Principal District Munsif Court, Kuzhithurai in both the I.A.Nos. 815 and 816 of 2009.

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9. In the result, these Civil Revision Petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
BTR

To

- 1.The Principal District Munsif Court,
Kuzhithurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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