



C.R.P.No.591 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.591 of 2022

1. V.Nadesan

2. N.Tharageswari

... Petitioners

Vs

S.Sethuraman

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the fair and final order dated 05.10.2021 passed in I.A.No.296 of 2020 in unnumbered A.S.No..... of 2020 on the file of the Principal District Court, Puducherry.

For Petitioners : Mr.K.S.Karthik Raja

ORDER

This Petition has been filed against the order passed by the Principal District Court, Puducherry, in I.A.No.296 of 2020 in unnumbered A.S.No..... of 2020 on 05.10.2021, dismissing the petition filed under Order XLI Rule 3A of CPC.



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2. The brief facts of the case is as follows :-

2.1. The petitioners are the defendants in the suit filed by the plaintiff/respondent in O.S.No.303 of 2016 on the file of the Principal Sub Court, Puducherry, seeking for redemption of mortgage of schedule mentioned property after receiving the mortgage amount of Rs.1,50,000/- and directing the 1st defendant to deliver vacant possession of schedule mentioned property to the plaintiff and also for directing the 1st defendant to pay a sum of Rs.7500/- as measne profits for illegal occupation and commercial use of schedule mentioned property by 1st defendant from the date of plaint till the date when defendants actually delivers the property to the plaintiff. The petitioners/defendants have also filed a written statement.

2.2. The trial Court, after a full fledged trial, had decreed the suit on 22.04.2019, aggrieved over the same, the petitioners have filed an appeal before the Principal District Court, Puducherry, in A.S.No..... of 2020 with the delay of 230 days and they have filed an application in I.A.No.296 of 2020 under Order XLI Rule 3A of CPC r/w 151 of CPC to condone the delay of 230 days.



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2.3. In I.A.No.296 of 2020, the first petitioner had filed an affidavit stating that since he was suffering from high sugar and blood pressure, he was not able to meet his new counsel and also not able to get the case bundle from his earlier counsel and thereby, there had been of 230 days in filing the appeal in time. The respondent had also filed a counter contending that the petitioners had entered appearance before the Court through his new counsel on 23.01.2020 and they have not shown any urgency in filing the appeal and the reasons stated by them cannot be taken as a ground for condoning the delay.

2.4. The appellate Court, holding that the petitioners had not produced any evidence to show that the first petitioner was taking treatment during the said period, had dismissed the application. Against which, the present Civil Revision Petition has been filed.

3. Learned counsel for the petitioners submitted that the petitioners had nowhere stated that the first petitioner was taking treatment, whereas, they had only stated that due to the high sugar and blood pressure, the first petitioner was unable to meet the counsel, in such circumstances, there was not need for the



petitioners to produce any documents to substantiate that the first petitioner was taking treatment. He reiterated that only due to the illness of the first petitioner, he was unable to meet his counsel. He further submitted that the delay is only 230 days and the petitioner has got a valid and good case. He also submitted that the petitioner is also ready to compensate the respondent for the delay. Thereby, he prayed to set aside the order passed by the appellate Court in I.A.No.296 of 2020 on 05.10.2021.

4. Heard the learned counsel for appearing for the petitioners and perused the materials available on record. Notice was ordered to the respondent and despite service of notice to the respondent and his name being printed in the cause list, there is no representation for the respondent.

5. On perusal of record, it is seen that the suit filed by the plaintiff/respondent was allowed in the year 2019 and the petitioners/defendants have filed an appeal in 2020 with a delay of 230 days. It is stated by the petitioners that due to the high blood pressure and sugar, the first petitioner was unable to file the appeal on time, thereby, there had been a delay and also, he, nowhere in the



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affidavit had stated that he was taking treatment for the same. In such circumstances, the Court cannot insist the petitioners to produce any materials to substantiate the reasons. Therefore, this Court is of the opinion that the dismissal order passed by the appellate Court in I.A.No.296 of 2020 is liable to be set aside.

6. In view of the above, this Civil Revision Petition stands allowed and the order passed by the Principal District Court, Puducherry, in I.A.No.296 of 2020 in unnumbered A.S.No..... of 2020 on 05.10.2021, is hereby set aside and the delay of 230 days in filing the appeal is condoned on condition that the petitioners depositing a sum of Rs.3,000/- (Rupees Three Thousand only) before the appellate Court. On such deposit being made by the petitioners, the amount shall be disbursed to the respondent on his appearance. Consequently, the connected miscellaneous petition is also closed. No costs.

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A.D.JAGADISH CHANDIRA, J.
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