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CRP.No.536 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.536 of 2015

and

C.M.P.No.5025 of 2019 & M.P.No.1 of 2015

1.M.Saroja
2.G.Ramani
3.R.Minnal Kodi

...Petitioners

Vs.

1.T.Sundari
2.G.Gowri
3.D.Kokila
4.T.Manoharan

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 16.09.2014 in CMP.No.1348 of 2012 in A.S.No.324 of 2010 on the file of the II-Additional District and Sessions Judge at Chennai against in O.S.No.1558 of 2006 on the file of the II-Assistant City Civil Court at Chennai.

For Petitioners : Mr.David Tyagaraj

For Respondents : No appearance



ORDER

Challenge in this revision is to the dismissal of an application filed under Section 5 of the Limitation Act in CMP.No.1348 of 2012 in A.S.No.324 of 2010 seeking condonation of delay of 497 days in filing an application to set aside the exparte judgment and decree in A.S.No.324 of 2010 dated 16.03.2011.

2.Originally, the suit in O.S.No.1558 of 2006 was laid by the petitioners herein seeking a decree for permanent injunction restraining the defendants / respondents herein from interfering with their possession of the suit property. The Trial Court, by its judgment and decree dated 08.03.2010, decreed the suit. Aggrieved, the respondents herein preferred an appeal in A.S.No.324 of 2010.

3.It is seen from the records that notice in the appeal was not served through normal process. After some attempts for service through regular mode, it appears that an application to effect service by publication was made and the same was allowed and the notice in the appeal was published in Makkal Kural, a daily newspaper on 27.01.2011. After such publication



having been effected, the Court proceeded to record satisfactory service on the respondents in the appeal / petitioners herein, proceeded to hear the appeal and allowed the same on merits. Contending that they came to know about the appeal itself only much later i.e., on 01.08.2012 when a criminal prosecution was launched by the 1st respondent herein against the petitioners and their heirs, the petitioners filed an application seeking condonation of delay of 497 days in seeking to set aside the exparte judgment dated 16.03.2011. The reason that was given for condonation of delay is that there was no proper service in the appeal and service by publication cannot be taken as proper service. It was also claimed that the petitioners did not have any knowledge of the appeal.

4.The same was resisted contending that since the petitioners, who are respondents in the appeal evaded service, paper publication was effected and therefore, they cannot be heard to contend that they were not aware of the appeal. The learned Trial Judge concluded that the judgment cannot be termed as a one sided judgment. He would also go on to hold that since publication was made, there was a possibility of petitioners having knowledge about the proceedings. Terming the reasons assigned as



insufficient, the learned Appellate Judge dismissed the application. Hence, this revision.

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5.I have heard Mr.David Tyagaraj, learned counsel appearing for the petitioners. Despite repeated adjournments, the learned counsel for the respondents has not appeared.

6.It is settled law that service by publication cannot amount to good service and knowledge of proceedings cannot be imputed on the party, who is served by publication. Service by publication can be resorted to only as a last resort and when the party who has been served through publication approaches the Court seeking rehearing, the Court must take a liberal view and permit such rehearing. There is nothing on record to show that the petitioners had knowledge of the proceedings, apart from the publication that was made.

7.I am therefore, of the view that the reasons assigned for condonation of delay are sufficient. Unless there is something to impute the knowledge on the petitioners apart from publication that was effected, I do



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not think, the Court should dismiss the application for restoration of the appeal and rehearing. Hence, this Civil Revision Petition is **allowed**, the order of the lower Appellate Court is set aside. The delay of 497 days in filing an application to set aside the exparte judgment is condoned. The appellate Court is directed to number the application under Order 41, Rule 21 for rehearing and dispose of it in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

18.01.2024

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Internet:Yes

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R.SUBRAMANIAN, J.

KKN

To:-

- 1.The II-Additional District and Sessions Court,
Chennai.
- 2.The II-Assistant City Civil Court,
Chennai.

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