



C.R.P.No.795 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. No.795 of 2022
and C.M.P.No.4003 of 2022

1.Murugan

2.Manikandan

... Petitioners/2nd and 3rd defendants

Vs.

Sivakozhundu(died)

Jayachandran

....Respondent/Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the fair and decreetal order passed by the learned District Munsif, Vanur dated 10.11.2021 passed in I.A.No.87 of 2017 in O.S.No.2 of 2010.

For Petitioners	: Mr.A.Mohamed Ismail
For Respondent	: Mr.M.R.Thangavel

ORDER

Challenging the order of dismissal dated 10.11.2021 made in I.A.No.87 of 2017 in O.S.No.2 of 2010, the aggrieved petitioners have preferred the present Civil Revision Petition.



C.R.P.No.795 of 2022

WEB COPY

2. The petitioners are the 2nd and 3rd defendants in O.S.No.2 of 2010 which was filed by the respondents/plaintiffs, seeking for declaration and permanent injunction and to refrain the defendants from trespassing into the plaintiff's property.

3. In the said suit, on 07.03.2011, an exparte decree came to be passed by the learned District Munsif, Vanur. Thereupon, after a delay of more than six years, the petitioners/defendants filed an Interlocutory Application in I.A.No.87 of 2017 seeking to condone the delay of 1964 days incurred in filing the petition to set aside the above exparte decree, dated 07.03.2011.

4. The petitioners/defendants 2 & 3 in I.A.No.87 of 2017 had stated that after the death of their father/ first defendant in the year 2011, the second defendant was affected by Jaundice for a period of more than five years and he was unable to contact his counsel to proceed with the case. The learned Judge, upon considering the submissions made by the



C.R.P.No.795 of 2022

petitioners/defendants 2 & 3, dismissed the same vide order dated 10.11.2021 holding that the reasons cited by the 2nd defendant was not sufficient for allowing the condone delay application. Aggrieved against the same, the petitioners/defendants 2 & 3 have preferred the present Civil Revision Petition.

5. According to the learned counsel for the petitioners, the Court below ought to have allowed the condone delay application so as to enable the petitioners/defendants 2 & 3 to contest the suit on merits in accordance with law. He further submitted that due to ill-health of the 1st petitioner, he was unable to proceed with the case and an *ex parte* decree was passed in the said suit. Even though the petitioners have clearly stated the reasons for such delay, the learned Judge, without considering the same, had erroneously dismissed the application in I.A.No.87 of 2017 holding that the delay was not properly explained. Hence, he prayed to set aside the order of dismissal passed by the Court below, thereby allowing the present civil revision petition.



C.R.P.No.795 of 2022

6. Per contra, the learned counsel for the respondent would submit that the petitioners had purposely deserted the matter with an intention to prolong the case. Therefore, the order passed by the Court below is just and reasonable and he prayed for dismissing the petition.

7. Heard the learned counsel appearing on either side and perused the materials produced before this Court.

8. This Court, upon perusing the records, would infer that upon receipt of summons, the petitioners herein/2nd and 3rd defendants failed to appear before the Court below, as a result of which, they were set exparte and an exparte decree came to be passed on 07.03.2011. Thereafter, the defendants have approached the Court below with an application to condone the delay of more than 6 years by way of filing a petition to set aside the exparte decree.

9. It is seen that at every point of time, the petitioners/defendants have been delaying or protracting the process of trial. The conduct of the



C.R.P.No.795 of 2022

petitioners does not seem to be bonafide. The delay is an inordinate delay and no proper explanation has been given by the petitioners for condonation of such inordinate delay and thereby, the trial Court has rightly found that the petitioners have not shown sufficient cause and dismissed the application to condone the delay of 1964 days. This Court is of the considered opinion that there is no infirmity in the order passed by the trial Court and the same does not warrant any interference of this Court.

10. Accordingly, the Civil Revision Petition is dismissed. No Costs. Consequently connected miscellaneous petition is closed.

15.02.2024

msv/sts

Index : Yes / No
Internet : Yes/ No
Speaking Order / Non-Speaking order

To:
The District Munsif,
Vanur



WEB COPY



C.R.P.No.795 of 2022

J.NISHA BANU, J.

msv

C.R.P. No.795 of 2022

and C.M.P.No.4003 of 2022

15.02.2024