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C.R.P.(PD).No.2678 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2678 of 2024
and C.M.P.No.14081 of 2024

T.Sekar

.. Petitioner

Versus

S.Sevugarathinam (Died)

1. S.Jayalakshmi
2. Sundara Prasad
3. Suganya Preetha

K.Thangavel Nadar (Died)

4. P.Muthumani Nadar
5. T.Selvi
6. T.Rasathi
7. T.Rajan

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order, dated 06.01.2024 passed in I.A.No.1 of 2019 in O.S.No.106 of 2014 on the file of Subordinate Judge at Pollachi.

For Petitioner : Mr.A.Rajapandian



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ORDER

This Civil Revision Petition is filed at the instance of the respondents
3 to 6.

2. The sole plaintiff, one S.Sevugarathinam expired. He pleaded that he had entered into an agreement of sale with one K.Thangavel Nadar. Sadly, K.Thangavel Nadar also passed away. Therefore, the legal heirs of S.Sevugarathinam filed an application to condone the delay in filing the application to set aside the abatement caused due to the death of K.Thangavel Nadar. The said application was received in I.A.No.1 of 2019. After issuance of notice, the legal heirs of K.Thangavel Nadar namely, the civil revision petitioner, his mother and siblings took an objection that only an application to condone the delay in filing set aside the abatement petition had been filed together with an application to bring on record the legal representatives. But, the plaintiffs had not taken out an application to set aside the abatement caused due to the death of K.Thangavel Nadar.



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3. They would plead that the application to set aside the abatement was filed only on 20.12.2021, whereas, the application to condone the delay had been filed much earlier on 22.04.2019. Therefore, they pleaded that the said petition may be dismissed. After hearing both the sides, the learned Subordinate Judge at Pollachi allowed the application by way of the order, dated 06.01.2023. Against which, the present civil revision petition is filed.

4. Heard Mr.A.Rajapandian, learned Counsel for the petitioner.

5. Mr.A.Rajapandian would vehemently submit that three applications would have to be filed while seeking to bring on record legal representatives in case the delay has exceeded 150 days from the date of the death of the concerned party. He would state that there must be an application to condone the delay, to set aside the abatement and thereafter, an application to bring on record the legal representatives. Instead of filing three applications, the plaintiffs/respondents had filed only one application namely to condone the delay. Since only one application to condone the delay had been filed, the Court ought not to have entertained the application.



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6. I have considered the arguments of Mr.A.Rajapandian, learned Counsel for the petitioner.

7. The suit is one for specific performance of an agreement of sale between the deceased plaintiff and the deceased first defendant. Therefore, vital rights over the properties are involved. Sadly, for the plaintiffs, the original plaintiff as well as the original first defendant passed away. Therefore, it was left to the legal representatives to continue the proceedings. It is not in dispute that they filed an application to condone the delay in filing the application to set aside the abatement. As rightly contended by Mr.A.Rajapandian, this application should have been returned calling upon the party to file the other two applications. Nonetheless, the procedural mistake that has been committed has been rectified by filing an application to set aside the abatement and bring on record subsequently. I have to recollect that procedure is only a handmaiden of justice and party need not be punished for not having followed the appropriate procedure. Filing of an application is only a curable defect which has subsequently



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been cured. Therefore, I do not see any prejudice that has been caused to the civil revision petitioners.

8. Mr.A.Rajapandian does not dispute that the parties who have been added as legal representatives are in fact the legal representatives of the deceased K.Thangavel Nadar. Furthermore, the learned Subordinate Judge, Pollachi has exercised her discretion in condoning the delay. She has found sufficient cause to allow the said application. Where the Court below has exercised the discretion unless and until the same is capricious or arbitrary, the scope for interference under Article 227 of the Constitution of India is very limited. In any event, as the mistake committed by the Counsel has subsequently been corrected, I do not want to penalise the party. In case even one application had been filed and allowed, our courts have taken a view that it is deemed that the other applications also stood allowed. Those arose in a situation which is reverse in the present case namely where only an application to bring on record had been filed without the other two applications. Applying the said principles to the facts of the present case, I do not find any reason to interfere.



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9. This Civil Revision Petition is dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

12.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs



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V.LAKSHMINARAYANAN, J.

grs

To

The Subordinate Judge,
Pollachi.

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and C.M.P.No.14081 of 2024

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