



C.R.P.No.2365 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.2365 of 2023

Ponnappan @ Devanagounder (died)

1. Muthammal
2. Selvakumar

.... Petitioners

vs

Devanagounder (died)

1. Vijayakumar
Ammani (died)
2. Saraswathi
3. Dulasimani
4. Sundari
5. Nadarajan

.... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order dated 07.01.2023 passed in I.A.No.31 of 2021 in A.S.No.34 of 2011 on the file of Subordinate Judge, Dharapuram dismissing the petition filed under Section 5 of Limitation Act.

For Petitioner : Mr.K.Sudhakar



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ORDER

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The Civil Revision Petition has been filed against the order dated 07.01.2023 passed in I.A.No.31 of 2021 in A.S.No.34 of 2011 on the file of Subordinate Judge, Dharapuram.

2. The brief facts:

The petitioners are the wife and son of one Ponnappan @ Devanagounder and the said Ponnappan @ Devanagounder had filed A.S.No.34 of 2011 before the Subordinate Court, Dharapuram. During the pendency of the appeal, the said Ponnappan @ Devanagounder died on 30.12.2020 and due to his death, the appeal in A.S.No.34 of 2011 got abated. The petitioners, being the legal representatives of the deceased Ponnappan @ Devanagounder, had filed a petition in I.A.No.31 of 2021, seeking to condone the delay of 144 days for setting aside the abatement of the appeal. The respondents remained exparte. The lower appellate court, finding that the petitioners have not stated any reasons for the delay, had dismissed the application, against which, the present civil revision petition has been filed.



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3. Though Notice has been sent to the respondents 1 to 3 and their names have been printed in the cause list, there is no representation for the respondents 1 to 3. The notice sent to the fourth respondent has been returned as “ no such person” and the fifth respondent has left. This Court is of the opinion that since the respondents remained exparte before the lower appellate court, notice is not necessary to them.

4. Mr.K.Sudhakar, learned counsel for the petitioners would submit that the husband of the first petitioner and the father of the second petitioner had filed A.S.No.34 of 2011 before Subordinate Court, Dharapuram and he died during Covid Pandemic on 30.12.2020. The petitioners, after coming to know about the abatement of appeal suit, filed by Ponnappan @ Devanagounder, filed an application in I.A.No.31 of 2021 to condone the delay of 144 days in setting aside the order of abatement. Learned counsel would submit that as per the suo motu orders passed in W.P.(C) No.3 of 2020 dated 10.01.2022 reported in **2022 Live Law (SC) 31**, there is no requirement for filing a petition to condone the delay. The learned counsel would further submit that only after coming to know about the abatement of the appeal filed by Ponnappan @ Devanagounder, the



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petitioners have approached the Court, whereas, the first appellate Court, without taking into consideration the exclusion of the period during Covid, had dismissed the application, stating that the petitioners have not stated any reasons for the delay. Learned counsel further submits that if the order is not set aside and the appeal is not restored to file, the petitioners would be put to great loss and severe hardship. Learned counsel would further submit that the respondents remained absent and they have not filed any counter before the court below and no prejudice would be caused to the respondents by restoration of the appeal.

5. Heard Mr.KSudhakar, learned counsel for the petitioners and I have perused the materials available on record.

6. The 1st petitioner is the wife and the 2nd petitioner is the son of Ponnappan @ Devanagounder and the said Ponnappan @ Deveanagounder passed away on 30.12.2020 during Covid Pandemic and the appeal filed by the said Ponnappan @ Deveanagounder was dismissed as abated on 21.1.2021. The petitioners have filed a petition in I.A.No.31 of 2021 to set aside the order of abatement of appeal with a petition to condone the delay of 144 days.



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7. Taking into consideration the fact that the order of abatement has taken place during the period of limitation excluded by the Apex Court, this Court is of the opinion that the impugned order passed by the lower appellate court has to be set aside.

8. Accordingly, the fair and final order in I.A.No.31 of 2021 in A.S.No,34 of 2011 is set aside and A.S.No.34 of 19 of 2011 is restored to file. The petitioners shall appear before the Sub Court, Dharapuram within a period of two weeks from the date of receipt of a copy of this order.

9. With the above observation, the Civil Revision Petition is allowed. No costs.

19.10.2024

sr
Index:yes/no
website:yes/no

To

The Subordinate Court, Dharapuram.

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A.D.JAGADISH CHANDIRA,J.,

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