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C.R.P.No.2767 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2024

CORAM

The Hon'ble Mr.Justice N.Sathish Kumar

C.R.P. No.2767 of 2024

1. K.Selvi
2. P.Suvitha

... Revision Petitioners

Vs.

K.S.Suresh Babu (Deceased)

1. J.Saravanan
2. S.Sathya

... Respondents

Prayer:-

Civil Revision Petition filed under Section 115 of CPC against the order passed in I.A.No.37 of 2020 in A.S.(Sr.)No.2977 of 2020 on the file of the Principal District Court, Vellore District, Vellore, dated 18.04.2024.

For Revision Petitioners : Mr.D.Ajith Kumar

For Respondent-1 : No such person

For Respondent-2 : Notice served, None appeared



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ORDER

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This Revision Petition is directed against the order passed in I.A.No.37 of 2020 in A.S.(Sr.)No.2977 of 2020 dated 18.04.2024 on the file of Principal District Court, Vellore District, Vellore (hereinafter, referred to as 'Trial Court')

2. The brief facts, which led to the filing of this Civil Revision Petition are as follows:-

i) A suit in O.S.No.237 of 2010 was filed by the revision petitioners/plaintiffs seeking for the relief of partition. The said suit was dismissed by the Trial Court vide a Judgement and Decree dated 26.07.2018. Aggrieved by the judgment passed by the Trial Court, the revision petitioners preferred an Appeal in A.S.No.Sr.No.2977 of 2020. Since there was a delay of 609 days in preferring such Appeal, the revision petitioners filed an Interlocutory Application in I.A.No.37 of 2020 to condone the said delay. The said Application was allowed by the Trial Court vide order 05.04.2024, with a condition requiring the revision



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petitioners to pay a sum of Rs.1,500/- each to the respondents 1 and 2/respondents 2 and 3 on or before 17.04.2024. As the said Order has not been complied with, the Application for Condonation of Delay has been dismissed vide order dated 18.04.2024. Hence, the present Revision Petition.

3. The learned counsel appearing for the revision petitioners would submit that the reason for non-compliance of the order passed by the Trial Court within the stipulated time is neither wilful nor wanton, but, owing to the fact that though the first respondent received the cost of Rs.1,500/-, the second respondent refused to receive the said amount; that apart, the date on which the Application was posted for reporting compliance, i.e. on 18.04.2024, the Advocates boycotted the Court, but the Trial Court, dismissed the Condone Delay Application vide the impugned order on the ground of both non-appearance and non-compliance; that though the revision petitioners filed two applications, one for restoration of the Condone Delay Application and another to extend the time so as to enable the revision petitioners to comply with the order dated 15.04.2024,



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however, the Trial Court, without appreciating all the aforesaid aspects in a proper perspective, returned the Applications. Hence, the learned counsel prayed for appropriate orders allowing the Revision Petition.

4. Heard the learned counsel for the revision petitioner and perused the material placed on record.. Though notices were served on respondents 1 and 2, the notice sent in respect of the first respondent was returned with an endorsement 'No such Person' And so far as the second respondent/P.Suvitha is concerned, though the same was served, she has not entered appearance, either in person or through any other Counsel. Hence, both the respondents 1 and 2 are set ex parte.

5. The revision petitioners have filed an Interlocutory Application in I.A.No.37 of 2020 seeking for condonation of delay of 609 days in preferring the Appeal. The Trial Court, vide order dated 05.04.2024 has condoned the delay, but, with a proviso, requiring the revision petitioners to pay Rs.1,500/- to the respondents 1 and 2/respondents 2 and 3 on or before 17.04.2024 and posted the Application for reporting compliance on



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18.04.2024 and by vide order dated 18.04.2024 dismissed the Application on two grounds, i) Non-compliance and ii) Non-appearance.

6. Therefore, firstly, it has to be seen as to whether the non-compliance of the order passed by the Trial Court on the part of the revision petitioner is willful or wanton. Secondly, whether the non-appearance of the revision petitioners is also deliberate.

6.1 It is the grievance of the revision petitioners that the first respondent received the sum of Rs.1,500/- paid by the revision petitioners but the second respondent refused to receive the said sum, and therefore, they were not in a position to comply with the order within the time stipulated by the Trial Court. Therefore, it is clear that the non-compliance of the order passed by the Trial Court by the revision petitioners is neither wilful nor wanton, but, purely owing to the fact that the second respondent refused to receive the amount from the revision petitioners.



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6.2 Secondly, it is seen that the reason for non-appearance of the revision petitioners was due to the fact that Advocates have boycotted the Court for two days, which is inclusive of the date, on which, the case was posted for compliance, i.e. on 18.04.2024, which has unfortunately, resulted in dismissal of the Condone Delay Application vide the impugned order. Therefore, the revision petitioners, having left with no other option, have taken two applications, one for restoration of the Condone Delay Application and another for Extension of Time to comply with the conditional order passed by the Trial Court by setting out reasons for non-compliance and non-appearance. Thus, when the revision petitioners have filed such Applications, the Trial Court, in order to fathom their bona fide intention, ought to have given the alternative option of directing them to deposit the amount into the Court, however, the Trial Court, without adopting such course, straightaway returned/rejected those applications, which is not fair.

6.3 In the light of the above, this Court directs the Trial Court to number both the Applications filed for restoration of Condone Delay



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Application and Application seeking for Extension of Time and decide the issue by taking note of the substantial rights of the parties, and in case, the Trial Court finds that the second respondent is still refusing to receive the amount from the revision petitioners, then, it shall direct the revision petitioners to deposit the sum of Rs.1,500/- into the Court deposit and shall proceed to hear the Appeal itself.

7. This Civil Revision Petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

09.12.2024

sd.

Index :yes/no

To

The Principal District Court, Vellore District,
Vellore.



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N.Sathish Kumar, J.

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