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C.R.P. No. 3156 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No. 3156 of 2022

and

C.M.P. Nos. 16877 of 2022 and 4046 of 2023

1. Parimala Devi

2. Gowtham

3. Kalavathi

... Petitioners

Vs.

Vasanth Kogilam

... Respondent

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the Order and decree dated 01.07.2022 in I.A. No. 157 of 2021 in O.S. No. 485 of 2010 on the file of the District Munsif Court, Dharapuram.

For Petitioners : Mr. R.Rajarajan

For Respondent : Mr. B.Vijayakumar



ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A. No. 157 of 2021 in O.S. No. 485 of 2010 on the file of the District Munsif, Dharapuram, wherein the petitioners herein have filed the petition before the Trial Court to condone the delay of 1189 days in filing the petition to set aside the Ex-parte decree dated 19.08.2017 under Section 5 of the Limitation Act. The said petition was dismissed by the Trial Court. Against which, the present Civil Revision Petition is filed.

2. According to the petitioners, they are the defendants in the main suit and the respondent herein has filed the said suit for the relief of partition and separate possession. In the said suit, the defendants were set ex-parte and the ex-parte decree was passed against them. In fact, the 1st petitioner was suffering from severe joint pain from 2017 to 2020 and she was not able to meet the Advocate to give instructions and to conduct the case. Therefore, the ex-parte decree was passed against the petitioners on 19.08.2017. After recovering from illness, the petitioners have taken steps to set aside the ex-parte decree. Therefore, there is the delay of 1189 days in filing the ex-parte decree set aside petition. The delay is neither willful nor wanton. Therefore, the delay may be condoned.



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6. The learned counsel appearing for the respondent would contend that the suit is filed in the year 2007 and thereafter, the case was periodically adjourned and when the matter was posted for Trial on 19.08.2017, the petitioners being the defendants have not contested the case and left the suit for ex-parte. Thereafter they have not filed any application within the period of limitation and the reasons stated by the petitioners that she is not doing well and suffering from joint pain are not correct and there are no documents to prove the said ailment. Therefore, the Trial Court, in the order, clearly stated that the petitioners' claim are not supported by any document and already sufficient opportunity was given for them. Therefore, the petition was dismissed and the aforesaid order is a reasoned one and thereby, the present Civil Revision Petition is liable to be dismissed.

7. This Court heard both sides and perused the materials available on record.

8. In this case, the petitioners are the defendants in the main suit and the respondent has filed a suit before the Trial Court for the relief of partition and separate possession. The defendants entered appearance through counsel. The petitioners were set ex-parte for non filing of written statements and



thereafter, the said order was set aside and thereafter, the trial was commenced. At the time of examination of P.W.1, the petitioners have not cross examined P.W.1 and ex-parte decree was passed. According to the petitioners, the first defendant was suffering from severe joint pain from 2017 to 2020 and thereby she was unable to meet her advocate to give instructions and to conduct the case. But the delay is 1189 days. For the huge delay, there is no proper explanation given by the petitioners and the reasons stated by the petitioners is not acceptable one. The Trial Court also in the order, correctly observed that already sufficient opportunities were given to the petitioners, but they have not availed those opportunities and there is no sufficient cause to allow this application. The 1st petitioner has not filed any medical records and merely stated that she was suffering from joint pain and the same is not sufficient to condone the huge delay. Therefore, the order passed by the Trial Court is reasoned order and it does not require interference.

9. The learned counsel appearing for the petitioners relied on the judgment of this Court in the case of ***Manjula -vs- Lambert Sandou & others*** in C.R.P. No. 408 of 2021 and also relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Collector Land Acquisition, Anantnag & Another -vs- Mst. Katiji & Others*** reported in ***AIR 1987 SC 1353***. On a



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careful perusal of the said judgments, it is clear that they will not be applicable to the facts of the present case. Because in this case, the petitioners have not stated valid reasons for the delay of 1189 days and the 1st petitioner simply stated that due to illness she was not able to appear before the Court and the same is not acceptable one. Therefore, the above said judgments are no way helpful to decide the case in favour of the petitioners.

10. In view of the above said discussions, this Court is of the opinion that this Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

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The District Munsif Court, Dharapuram.



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P.DHANABAL, J.,

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