



C.R.P.(NPD).No.3071 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.3071 of 2021

and C.M.P.No.21653 of 2021

- 1.P.Swarnambal
- 2.P.Senthilkumar
- 3.P.Mohanasundaram
- 4.P.Gokulakrishnan

... Petitioners

VS

- 1.T.Chandrasekaran
- 2.T.Ravichandran
- 3.T.Subramaniam

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed in I.A.No.127 of 2020 in O.S.No.397 of 2004 on the file of the District Munsif cum Judicial Magistrate of Uthukuli, dated 04.08.2021.

For Petitioners : Mr.V.S.Kesavan

For Respondents : Mr.M.Guruprasad
for R1 to R3

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court condoning the delay of 749 days in representing the returned papers.



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2. The petitioners herein filed a suit for declaration of title and recovery of possession and the same was decreed ex-parte on 26.08.2009. The respondents/defendants filed an application to set aside the ex-parte decree in time. However, the said application was returned for certain defects. Thereafter, the same was represented by the respondents only on 10.10.2011 stating that the returned papers were mingled with old records. The said application was again returned by the Court pointing out certain defects. The returned papers were not presented immediately and the same were represented only on 02.06.2015 with the delay of 749 days.

3. In the affidavit filed in support of the application to condone delay in representation, it was stated that the application filed to set aside the exparte decree under under Order 9 Rule 13 of CPC was returned on 28.02.2013 and the same could be represented only on 15.03.2013. Again the application was returned on 29.04.2013 for certain defects. The junior counsel on record had taken the returned papers and unfortunately the said returned papers were mingled with other records. There was some delay in



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tracing out the papers and ultimately the papers were represented on
02.06.2015.

4. The trial Court having satisfied with the reasons assigned by the petitioners condoned the delay of 749 days and directed the numbering of Order 9 Rule 13 CPC application. Aggrieved by the same, the petitioners are before this Court.

5. The learned counsel appearing for the petitioners submitted that the Order 9 Rule 13 CPC application was returned twice and on both occasions, there was an enormous delay of two years on the part of the petitioners. The learned counsel further submitted that he filed execution petition in E.P.No.42 of 2012 and the same has been contested by the respondents vehemently from the year 2012 . However, they have not taken any steps to number the application filed by him under Order 9 Rule 13 of CPC.



6. Having satisfied with the reasons assigned by the respondents, the trial Court exercised the discretion in favour of them and condoned the delay in representation.

7. It is settled law, when there is a conflict between the substantial rights of the parties and procedural law, the former shall prevail over the latter. Since the trial Court exercised the discretion in favour of the respondent and condoned the delay in representation, I do not find any reason to interfere with the substantial portion of the impugned order in this revision. However, having regard to the fact that the Order 9 Rule 13 CPC application filed by the respondents as early as 2009 has not been numbered for ten years due to the delay in representation, the petitioners who were made to suffer for nearly 10 years due to the failure of the respondents to number two applications shall be adequately compensated by the imposition of heavy costs. Accordingly, the respondents are directed to pay a sum of Rs.20,000/- towards costs to the petitioners within a period of four weeks from the date of receipt of a copy of this order and the costs shall be paid by way of Demand Draft in the name of first petitioner.



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8. In case, the respondents failed to pay the costs within the time stipulated, the benefit of the impugned order will not enure to them and I.A.No.127 of 2020 filed to condone the delay in representation will stand automatically dismissed.

9. On payment of the costs as stipulated above, the trial Court is directed to take up the other application filed by the respondents to set aside the exparte decree and dispose of the same in accordance with law.

10. With these observations, the Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

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To

The District Munsif cum Judicial Magistrate,
Uthukuli.

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04.03.2024