



C.R.P.No.693 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.693 of 2022
and C.M.P.No.3532 of 2021

1) Jothiramalingam
2) Indira

...Petitioners

Vs.

1) M.Indirajithan
2) V.T.Venkatesan

... Respondents

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order passed by the District Munsif Court, Dharmapuri in I.A.No.129 of 2019 in O.S.No.231 of 2007 dated 02.07.2019 and to allow the Interlocutory Application as prayed for.

For Petitioner : Mr.J.Pradeep

For Respondents : No Appearance

ORDER

Aggrieved against the fair and decretal order passed by the District Munsif Court, Dharmapuri in I.A.No.129 of 2019 in O.S.No.231 of 2007 dated 02.07.2019 , the plaintiffs/ petitioners have preferred the present civil



C.R.P.No.693 of 2022

revision petition.

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2. Suit in O.S.No.231 of 2007 was filed for specific performance by the petitioners herein. On the side of defendants, neither any witness was examined nor documents were marked. Therefore, the said suit was decreed on 17.07.2009 by setting the defendants as ex parte and a preliminary decree came to be passed in favour of the plaintiffs/ petitioners herein.

3. Again on 21.03.2013, the defendants have filed their written statement in the above suit and on 02.02.2015, the suit was taken up for hearing in respect of final decree proceedings and for the grant of other reliefs. On such date of hearing, there was no representation made on both sides, namely the plaintiffs as well as the defendants. Since there was no representation made on the side of the plaintiffs, the Court below dismissed the said suit, vide order dated 02.02.2015.

4. Aggrieved against the said order of dismissal of suit, the plaintiffs again filed an Interlocutory Application under Section 5 of the Limitation Act, seeking to set aside the order of dismissal of the suit for non-prosecution. The said I.A. was filed in I.A.No.129 of 2019 with a delay of



C.R.P.No.693 of 2022

1462 days. The Court below, after hearing the submissions made on either sides, dismissed the I.A. vide order dated 02.07.2019 holding that the delay of 1464 days in filing the petition to set aside the decree of dismissal of the suit, for the reason of non-appearance, has not been explained properly.

5. Further the Court below has held that there was no medical records submitted on the side of the plaintiffs to prove that only due to the medical treatment underwent by the plaintiffs, they were unable to appear before the Court below on the said date of hearing. The learned Judge had also pointed out that after 02.02.2015, the plaintiffs have not taken any steps to set aside the order of dismissal passed in the above suit and hence, dismissed the I.A. Against the dismissal of the said I.A, the plaintiffs have preferred the present revision petition.

6. Heard the learned counsel for the revision petitioners and perused the materials placed before this Court.

7. Even though the learned counsel for the revision petitioners/plaintiffs contended that there was no deliberate inaction on the



C.R.P.No.693 of 2022

part of the plaintiffs for the delay of 1464 days, this Court does not find any merits in the revision petition. The findings of the learned Judge is based on settled proposition of law on the matter of condonation of delay. The learned Judge has rightly pointed out in the impugned order that there was no proper reasons or explanation given by the plaintiffs for such huge delay of 1464 days, both in the interlocutory application as well as in the affidavit.

8. Therefore, the reasons cited by the learned Judge is well founded and therefore, this Court does not finds any necessity to interfere with the same. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

14.03.2024

Index:Yes/No
Internet:Yes/No
sts



C.R.P.No.693 of 2022

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The District Munsif Court,
Dharmapuri



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C.R.P.No.693 of 2022

J.NISHA BANU,J.

sts

Order made in
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