



C.R.P.(NPD).No.3815 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

C.R.P.(NPD).No.3815 of 2022

Subbiah Gounder (Dead)

1. Shanmugamurthy
2. Dhandapani
3. Rajeshwari
4. Mahalingam

... Petitioners

vs.

1. Eswaramurthy
2. Karthik
3. Deivanai
4. Arukani
5. Rangathal

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 26.09.2022 passed by the Principal District Munsif Court, Coimbatore in I.A.No.406 of 2018 in O.S.No.1391 of 2005 and allow the Civil Revision Petition.

For Petitioners : Mr.S.Manikandan

For R1 to R3 : Mr.Rahul Balaji



WEB COPY



C.R.P.(NPD).No.3815 of 2022

ORDER

This Civil Revision Petition has been preferred as against the order passed in I.A.No.406 of 2018 in O.S.No.1391 of 2005 on the file of the Principal District Munsif, Coimbatore, dated 26.09.2022, wherein, these petitioners have filed a petition before the Trial Court under Section 5 of the Limitation Act, to condone the delay of 548 days in filing a petition to restore the suit, which was dismissed for default. The said petition was dismissed by the Trial Court. Against which, the present Civil Revision Petition is filed.

2. The case of the petitioners is that they are the plaintiffs in the main suit and they have filed a suit for partition as against the respondents. The petitioners are villagers and they do not have knowledge about the Court proceedings. Their advocate said that, he will inform about the case but due to his death, he was unable to intimate about the case. Already the petitioners have filed a petition in W.P.No.25665 of 2017 and the same is pending. Having trust over the previous counsel, he did not appear before the Court and thereafter, the suit was dismissed for default on 17.08.2016. Since their



C.R.P.(NPD).No.3815 of 2022

previous counsel was died, they unable to collect the particulars about the case status and thereby there is a delay of 548 days in filing the petition to restore the suit, which was dismissed for default on 17.08.2016.

3. The case of the respondents is that the suit was filed before the sub Court, Coimbatore in O.S.No.388 of 1989 and the written statement was filed in the year 1991 and for the past several years, the petitioners did not come forward to proceed with the case. Lastly, on 17.08.2016 due to non appearance, the suit was dismissed for default. Thereafter, without any valid reasons, they filed a petition for condoning the delay of 548 days in filing the petition to restore the suit. The averment made in the petition that in the month of September 2017, they came to know about the death of their previous counsel are false. The petitioners cannot blame the previous counsel and they have to follow the case. The suit is pending from the year 1993 onwards and in other cases, they appeared and conducted the cases. In fact, these petitioners filed a petition before the Tahsildar to declare them as tenants and the same was allowed. The respondents filed appeal in A.No.14 of 2005, where the petitioners appeared through counsel and the said appeal was allowed on 30.07.2010. Thereafter, the Revision Petition was filed in



C.R.P.(NPD).No.3815 of 2022

C.R.P.No.26116 of 2010 there also, the petitioners appeared through counsel and the said revision was also dismissed. Thereafter, the petitioners filed Writ Petitions before this Court and also they gave a complaint as against the respondents. Then, filed Crl.O.P.No.27862 of 2017 and thereafter, the said case was closed by the police officials. Therefore, the petitioners very well known about the Court proceedings and they all along conducted the other cases, but due to lack of merits in this case, they failed to proceed with the case and only now to delay the proceedings, they filed this petition by stating false reasons.

4. Before the Trial Court, no oral or documentary evidences adduced by either side. On the side of the respondents they marked Ex.R1 to R8. The Trial Court after hearing both sides and perusing the records, dismissed the petition.

5. The learned counsel appearing for the petitioners would contend that this petitioners are the plaintiffs in the main suit and filed a suit for relief of partition and separate possession against this respondents. They engaged their counsel and the said counsel assured that, he will inform about

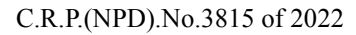


C.R.P.(NPD).No.3815 of 2022

WEB COPY

the stage of the case and in the meantime, he died, and that, the stage of the case was not informed to the petitioners. Thereafter, they came to know about the stage of the case, it was dismissed for default on 17.08.2016. Thereafter, there is a delay in collecting the papers since their previous counsel was dead. Therefore, there is a delay of 548 days in filing a petition to restore the suit, which was dismissed for default on 17.08.2016. The petitioners are villagers and they have no knowledge about the Court proceedings and thereby, they are unable to follow the case. The Trial Court failed to consider the above said reasons and dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside by allowing this Civil Revision Petition.

6. The learned counsel appearing for the respondents would contend that the petitioners have already conducted so many cases as against these respondents. They have already filed a petition before the Tahsildar, to declare them as tenants in the suit. But the said petition was allowed and as against the said order, the respondents preferred an appeal and the said appeal was also dismissed thereafter the petitioners' preferred Revision Petition before the District Revenue Officer, Coimbatore and the same was



8. In this case, the petitioners are the plaintiffs in the main suit and the main suit was filed for partition and separate possession as against the respondents herein. The said suit was dismissed for default on 17.08.2016 due to non-appearance of the petitioners. According to the petitioners, they engaged their counsel and their counsel assured that he would inform about the stage of the case whenever their presence is required. But their counsel unfortunately died and thereby they unable to know about the stage of the



C.R.P.(NPD).No.3815 of 2022

case. Thereafter, they came to know about the case that the suit was dismissed for default on 17.08.2016. Since they are from village they are unable to receive the bundles and their previous counsel died, there is a delay of 548 days. The above said reason stated by the petitioners are stoutly denied by the respondents and according to the respondents these petitioners have conducted the other cases by engaging their counsels and they cannot take a defence as they have no knowledge about the Court proceedings.

9. This Court has carefully perused the entire materials and the reasons stated by the petitioners that they are villagers and they have no knowledge about the Court proceedings is not a reason to condone the delay. Moreover, they stated that their previous counsel died, but they have not stated when their previous counsel died and when they came to know about the death of the previous counsel and they have not stated about on which date, they came to know about the exparte decree. Moreover, on perusal of the records submitted by the respondents, they revealed that already these petitioners have conducted the cases before the revenue officials in respect of the tenancy over the property and thereafter the petitioners have filed Writ Petitions before this Court by engaging their counsels and also filed



C.R.P.(NPD).No.3815 of 2022

Criminal Original Petition for direction to the police. Therefore the above said documents clearly shows that the petitioners have all along conducted the other cases except this partition suit. The petitioners failed to explain for the huge delay of 548 days and without proper explanation for the delay, it is not appropriate to allow the petition to condone the delay of 548 days.

10. The learned counsel appearing for the respondents has relied on the following Judgments:

(1) *Bharat Babulal Makwana and Others vs. Narottam V. Sheth and Another* reported in *2014 SCC Online Bombay 1135*.

(2) *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others* reported in *2013 (4) CCC 32*.

11. On a careful perusal of the above said judgments, it is clear that the exercise of judicial discretion of Court shall be allowed, if there is no presumption that the delay is occasioned deliberately or on account of culpable negligence.

12. In the case on hand, the petitioners conducted all other cases and



C.R.P.(NPD).No.3815 of 2022

left the matter for dismissed for default and the reasons stated by the petitioners are not genuine. In this context, the Trial Court also after referring various judgments of the Hon'ble Supreme Court and this Court has correctly dismissed the petition. Therefore, the order passed by the Trial Court is reasoned and proper and it does not warrant interference.

13. In view of the above said discussions, this Court is of the opinion that the Civil Revision Petition has no merits and the same has to be dismissed.

14. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

01.08.2024

ssi
Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No

To:

1.The Principal District Munsif,
Coimbatore.



WEB COPY

2. The Section Officer,
V.R. Section, High Court of Madras.



C.R.P.(NPD).No.3815 of 2022

P. DHANABAL, J.,

ssi

C.R.P.(NPD).No.3815 of 2022

01.08.2024