



C.R.P.No.1184 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1184 of 2020

1.Minor M.Deepakaran
2.Minor M.Ramu

... Petitioners

Vs.

1.M.Arivuselvam
2.S.Manimaran

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 23.07.2019 made in I.A.No.366 of 2018 by the Hon'ble Additional District Judge, Villupuram

For Petitioner	: M/s.K.Arunagiri
For respondent 1	: exparte
For respondent 2	: No appearance



ORDER

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The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioners seeking to condone the delay of 137 days in filing petition to restore the suit which was dismissed for default.

2. The petitioner herein are minors represented by their natural guardian and mother. They filed a suit for declaration that sale deed dated 11.07.2007 executed by 2nd defendant in favour of 1st defendant was void in so far as 2/3rd share of the petitioners and also for partition of their 2/3rd share. The suit was dismissed for default due to non-appearance of the petitioners on 30.10.2017. Hence, the instant application has been filed by the petitioners to restore the suit with condone delay petition. In the affidavit filed in support of the condone delay petition, it was stated by the petitioners that on the date of hearing, the petitioners' guardian Indira was proceeding to Court in a bus and due to traffic jam, she could not meet her counsel in time and appear before the Court.



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3. It is seen from the impugned order that 1st respondent was set *exparte* before the Trial Court and hence, issuance of notice to him is not necessary. As far as 2nd respondent is concerned, notice was served on him and his name appears in the list. It is also seen from the impugned order that 2nd respondent has no objection for allowing the application before the Trial Court in spite of the same, the application has been dismissed.

4. Having regard to the fact that the petitioners are minors and the suit has been filed for partition in respect of 2/3rd share, this Court is inclined to take liberal approach for considering the condone delay in filing petition to restore the suit which was dismissed for default. In view of the facts and circumstances of the case, this Court feels that it would be appropriate to give one chance to the petitioners to get along with the suit on merits. Hence, the impugned order is set aside by imposing cost on the petitioners.

5. Accordingly, the Civil Revision Petition is allowed by setting aside the order impugned in this revision on condition that petitioners shall make a



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payment of Rs.2000/- to the credit of Chief Justice Relief Fund, High Court of Madras within a period of two weeks from today. In case, the petitioners failed to comply with the conditions within the time stipulated, the Civil Revision Petition shall stand automatically dismissed. In case, the petitioners complied with the condition within the time stipulated, the impugned order is set aside and the Trial Court is directed to number the application filed by the petitioners to restore the suit and dispose it of in accordance with law. No costs.

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Index : Yes / No
Internet : Yes / No
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To

The learned Additional District Judge, Villupuram



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S.SOUNTHAR, J.

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