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C.R.P.[NPD].No.4150 of 2024
and C.M.P.No.22727 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.4150 of 2024
and C.M.P.No.22727 of 2024

P.K.Sekar

.. Petitioner

Vs.

B.S.Shanmugam (Died)

1.Senthamarai

2.Arunkumar

3.Aravind

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 12.08.2024 in I.A.No.6 of 2024 in I.A.No.2 of 2022 in I.A.No.1 of 2021 in O.S.No.20 of 2017 on the file of the learned Principal District Judge, Dharmapuri.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.K.M.Hareesh
for M/s.P.V.Law Associates

ORDER

This Civil Revision Petition has been filed seeking to set aside the order dated 12.08.2024 in I.A.No.6 of 2024 in I.A.No.2 of 2022 in I.A.No.1



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of 2021 in O.S.No.20 of 2017 on the file of the learned Principal District Judge, Dharmapuri.

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2.The brief facts of the case are as follows:

2.1.The plaintiff viz., Shanmugam, filed the suit for specific performance to enforce the agreement dated 08.05.2014. When the case was posted for defense evidence, the application in I.A.No.1 of 2021, has been filed by the Revision Petitioner/defendant to re-examine the plaintiff. The said application was allowed on payment of costs of Rs.1000/-. However, the costs was not paid and therefore, the application was dismissed on 23.03.2022 and the defense side evidence was also closed. Thereafter, the plaintiff filed the application in I.A.No.2 of 2022, seeking to extent the period for making payment of costs and the same was dismissed for default on 17.03.2023. Thereafter, I.A.No.6 of 2024, has been filed by the petitioner to condone the delay of 344 days in filing application to restore I.A.No.2 of 2022 on the ground that during the pendency of I.A.No.2 of 2022, the plaintiff died on 29.09.2022. However, the steps had not taken to implead the legal heirs of the plaintiff on time. Therefore, there occurred a delay of



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344 days in filing the application to restore the application seeking extension of time for making payment. However, the Court below dismissed the condone delay application. Hence, the present Civil Revision Petition has been filed.

3.Learned counsel appearing for the petitioner submitted that though the case was posted for defense evidence on 08.04.2021, he has filed the application to re-open the defence case. The said application was allowed on payment of costs of Rs.1000/- on or before 23.02.2022. As the costs was not paid in time, the application came to be dismissed. The petitioner also filed application under Section 148 CPC, seeking extension of time for making payment, which was dismissed for default. In the meanwhile, the plaintiff died and steps were not taken to implead them. Hence, the delay of 344 days occurred in filing restoration application. He further submitted that due to Covid-Pandemic situation the petitioner could not make the payment in time and appear before the Court and the delay is not willful and wanton and hence, he prayed to allow the present petition.



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4.Learned counsel appearing for the respondent submitted that the delay has not been properly explained by the petitioner. The petitioner keep on filing applications to drag on the proceedings in the suit and hence, he submitted that there is no infirmity in the order passed by the Court below in dismissing the condone delay application.

5.Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials available on record.

6.The fact that the defence evidence was closed is not in dispute. The application has been filed to re-open the defense case was allowed on payment of costs of Rs.1000/- on or before 23.02.2022. Meanwhile, the petitioner has filed application to extend the time for payment of costs. During the pendency of the said application, the plaintiff died. It is relevant to note that the petitioner/defendant was directed to take steps in the said application. When the plaintiff died, the legal heirs ought to have brought on record. The delay in impleading the legal heirs of the plaintiff cannot put against the petitioner/defendant.



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7.Considering the above submissions, this Court is of the view that though there was no detail explanation for each and every day of delay, when the application for impleading plaintiff's legal heir is pending, the petitioner/defendant cannot be insisted to implead them in the I.A filed by him. In any event, considering the substantial right of the party and considering the fact that the suit has been filed based on the un-registered agreement for the specific performance, liberal approach is adopted to condone the delay.

8.Accordingly, this Civil Revision Petition is allowed and the orders of the trial Court is set aside. The Principal District Judge, Dharmapuri, shall proceed with the trial and dispose of the suit within a period of four months from the date of receipt of a copy of this order.

19.11.2024

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

N.SATHISH KUMAR, J.

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rst

To:

The Principal District Judge,
Dharmapuri.

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