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CRP.No.4759 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.4759 of 2024

S.C.Balu (Died)
Ayyammal (Died)
1.B.Shanthi
2.B.Gopinath
3.B.Iswarya

.. Petitioners

Versus

1.T.Samuel Prabakar
2.Ajitha Samuel Prabakar

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the order dated 01.10.2024 made in unnumbered I.A.No. Of 2024 in unnumbered A.S.No. of 2016 on the file of the learned Principal Subordinate Judge, Salem.

For Petitioner : Mr.T.S.Vijaya Raghavan

ORDER

Challenge has been made to the order dated 01.10.2024 rejecting the unnumbered application filed by the legal heirs of the judgment debtor to file an appeal with a delay of 6 years, 11 months and 10 days. The said application has been filed dismissed citing the earlier dismissal of the



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application in I.A.No.1 of 2023 in unnumbered A.S.No.____ of 2023 dated 02.02.2024.

2. The plaintiff namely the respondent filed a suit in O.S.No.1412 of 2007 on the file of I Additional District Munsif, Salem against one S.C.Balu, father of the revision petitioners. The said suit has been decreed on 20.01.2016. The appeal has been rightly filed by the judgment debtor in the year 2016, however, the said appeal was returned for certain rectifications. In the meanwhile, the appellant had also filed an application to amend the decree which also appears to have been ordered. The appellant died during the year 2018. Thereafter, appeal has been filed with a condonation of delay of 6 years, 11 months and 10 days in the name of the appellant who had already died in the year 2018. The said application was dismissed on 05.02.2024. Thereafter, the legal heirs themselves filed an application to condone the representation of the delay of 6 years, 11 months and 10 days, the Trial Court on the sole ground that earlier application has already dismissed, hence, dismissed the present application.



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3. Heard the learned counsel for the petitioner and perused the materials placed on record.

4. At the outset, this Court is of the view that the approach of the Trial Court is not proper. The earlier application has been dismissed on the ground that the application is filed by a dead person and that application has been filed in the year 2023 when the appellant died in the year 2018. Only in that context, earlier application has been dismissed. Whereas, now, it appears that application has been filed by the legal heirs themselves to file an appeal with a condonation of delay of 6 years, 11 months and 10 days. Therefore, when the appellant had already filed an appeal, which has been returned and in the meanwhile, he had died in the year 2018 and the legal heirs have not been impleaded, now the legal heirs have filed an application to condone the delay of 6 years, 11 months and 10 days, the Trial Court ought to have numbered the appeal and decided the issue on merits. Rejecting the application without even numbering is not fair. Hence, the impugned order is set aside.



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N.SATHISH KUMAR, J.,

dhk

5. Accordingly, the Trial Court is directed to number the application filed by the revision petitioners and decide the appeal on merits. In view of the above, this revision stands allowed. No costs.

25.11.2024

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

To

1.The Principal Subordinate Judge
Principal Subordinate Court, Salem

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