



C.RP(MD)No.1181 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:31.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.1181 of 2023

1.M.Indrani
2.M.M.Arun
3.M.M.Priya

..Revision Petitioners/
Petitioners/Appellants

Vs.

Ramaththaal(Died)
1.Parvatham
2.Sampth Kumar
3.Naveen Kumar

..Respondents/Respondents/
Respondents

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair order and decreetal order dated 10.10.2022 made in I.A.No.1 of 2022 in C.M.A.SR No.1561 of 2022 on the file of the Principal Sub Judge, Karur.



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For Petitioner
For Respondents

:Mr.V.G.Kamalesh
:Mr.D.Kirubakaran

ORDER

The civil revision petition is filed against the order dated 10.10.2022 in IA.No.1 of 2022 in CMSR.No.1561 of 2022.

2.The suit in OS.No.326 of 2011 was filed to declare that the plaintiffs are the exclusive owners of the suit properties and for consequential permanent injunction. The defendants filed written statement in the above suit and issues were framed and the trial was proceeding. The plaintiff side evidence was over and when the matter was kept for the defendant's side evidence, the defendants were not present before the Court and therefore, they were set ex-parte and an ex-parte decree was passed on 26.02.2019. Thereafter, the defendants filed IA.No.3 of 2019 to condone the delay of 28 days delay in filing the application for setting aside the ex-parte decree. The same was allowed on payment of a cost of Rs.500/- to the District Legal Services Authority on or before 29.01.2021. The



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order was passed on 21.20.21. Since the cost was not paid, the application was dismissed. The petitioners herein chose to file civil miscellaneous appeal, as against the said order of dismissal, however, with a delay of 368 days. The same was dismissed. As against which, the present revival revision petition is filed.

3.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents.

4.After hearing the parties for a while, this Court found that when the defendants were contesting the suit and in the defence stage, they were said ex-parte and an ex-parte decree was granted. When the application for setting aside the ex-parte decree was also filed with a delay of 28 days, the trial Court has exercised its discretion that the defendants had not chosen to deposit Rs.500/- within time and therefore the application came to be dismissed. Even the appeal was not filed immediately.



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5.The learned counsel appearing on behalf of the petitioners would submit that the order of the trial Court allowing the application for condoning the delay of 28 days was passed on 21.20.21. On the very same day, the learned counsel appearing on behalf of the petitioners, namely Mr.Anbarasu died. Only on account thereof, there was no information to the petitioners and the cost was not paid in time and even time was taken in preferring the appeal after gathering the particulars and applying for the copy. Therefore, this Court directed the learned counsel for the petitioners to produce the death certificate of the said learned counsel.

6.Today when the matter came up for hearing, the death certificate of the said learned counsel Mr.Anbarasu is produced before this Court. The death certificate reveals that the date of death as 21.01.2021.



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7.The learned counsel appearing on behalf of the respondents would submit that it could be seen that the suit was filed in the year 2011. If at this belated stage, the ex-parte decree is set aside, the plaintiffs would be put to grave prejudice. It is nothing but the carelessness on the part of the defendants. Even though it may be true that the counsel had since passed away, thereafter, filing the appeal itself was erroneous and that too the same was filed only after a period of one year with the delay of 368 days and therefore, this Court need not interfere with the order of the trial court.

8.I have considered the submissions made on either side and perused the material records of the case.

9.Though on the earlier occasion the defendants did not appear and conduct the suit when the suit was in the defence stage, there was a lapse, but the same was condoned by the trial Court by allowing the application for condonation of delay of 28 days by



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ordering payment of Rs.500/- as cost to the District Legal Services Authority. The said order was passed on 21.20.21. There is no quarrel between the parties that the petitioners herein was represented by the learned counsel viz., Mr.Anbarasu and that he unfortunately passed away on the same date. Therefore, I am of the opinion that there is justification in not paying the cost on or before 29.01.2021. Even thereafter in the normal course of event, when the counsel on record dies to get the particulars and to file an appeal, would take some time.

10. Therefore, I am of the view that the default as well as the delay in filing the appeal is duly explained, even though whether the appeal is to be filed as against an order of dismissal of an application under Section 5 of the Limitation Act or whether the parties should approach this Court by way of a Civil Revision petition is arguable. The fact remains that the matter has been carried on to the further Court. Even the trial Court has allowed the application, but however only on the default of non payment of



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cost, the petition is dismissed. In view thereof, in the procedural ramblings, no further time can be lost. The suit is of the year 2011 and the matter has to be substantially decided on merits. In view of the fact that the lapse has been explained due to the death of the counsel, I am of the view that one opportunity has to be granted to the petitioner to contest the suit. Therefore, without further resorting to the numbering of the appeal and deciding on the maintainability and deciding on the condonation of delay and setting aside the ex-parte decree, in exercise of the jurisdiction of this Court, I hold that the petitioners herein can be put on terms and the very application for setting aside the ex-parte decree itself can be ordered.

11. In view thereof, the Civil Revision Petition is disposed of on the following terms:

(i) the order dated 10.10.2022 made in IA.No. 1 of 2022 in CMSR.No.1561 of 2022 shall stand set aside.



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(ii) However, no further orders need be passed in CMSR No. 1561 of 2022.

(iii) the delay of 28 days in filing the application for condonation of delay stands condoned on condition that the defendants deposit the said cost of Rs.500/- to the District Legal Service Authority, within three working days from the date of receipt of the copy of this order.

(iv) further the application for setting aside the ex-parte decree shall also stand allowed on paying a cost of Rs.2000/- the same can be paid to the counsel for respondents appearing before this Court, within a period of one week from today.

(v) upon compliance of the above conditions, the ex-parte decree dated 26.02.2019 shall stand set aside, and the suit is restored to the file of the trial Court and the same to be disposed of from this stage on which it stands;

(vi) the defendants shall not take any further adjournment and shall be ready with their witnesses and shall cooperate for the early disposal of the suit on merits;



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(vii)The trial Court shall endeavour to dispose of the suit as expeditiously as possible, in any event, not later than three months from the date on which it is restored to the file.

(viii)No costs.

31.07.2024

NCC:Yes/No

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To
The Principal Sub Judge,
Karur.



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D.BHARATHA CHAKRAVARTHY, J.

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