



C.R.P.(MD)No.860 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.860 of 2021 and
C.M.P.(MD)No.4690 of 2021

- 1.Vasanthammal (Died)
- 2.Dhayanithi
- 3.Murugesan
- 4.Premalatha
- 5.Parimala
- 6.Vanitha

... Petitioners

(Petitioners 2 to 6 are brought on record
as LR's of the deceased sole petitioner,
vide Court order, dated 13.12.2022, made
in CMP(MD)Nos.11726, 11729 and 11731
of 2022 in CRP(MD)No.860 of 2021)

Vs.

1.Irulan @ Irulappan

2.The Sub Registrar,
Sub Registrar Office,
Kanavaipatti Road,
Batlagundu,
Nilakkottai Taluk,
Dindigul District.

3.The District Collector,
District Collector Office,
Theni.

... Respondents



C.R.P.(MD)No.860 of 2021

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 04.03.2021, passed in I.A.No.123 of 2020 in I.A.No.238 of 2015 in O.S.No.124 of 2013 on the file of the District Munsif Court, Periyakulam.

For Petitioners : Mr.J.Lawrance
For R2 and R3 : Mr.V.Om Prakash
Government Advocate

ORDER

The civil revision petition is filed against the order, dated 04.03.2021, passed in I.A.No.123 of 2020 in I.A.No.238 of 2015 in O.S.No.124 of 2013 on the file of the District Munsif Court, Periyakulam.

2. The petitioner herein is the 1st defendant in the suit. The suit is filed to redeem the mortgage by accepting the payment of Rs.5,000/- and to cancel the entry in the Sub Register Office and to hand over the possession of the property. On receipt of the notice, the 1st defendant has entered appearance through an Advocate and has also filed the written statement, however, the Advocate and the defendant did not appear before the Trial Court at the time of cross examination on 09.01.2015. Hence, the Trial Court has set the 1st defendant as ex-parte and



has passed a decree. Immediately, the 1st defendant preferred I.A.No.238 of 2015 on 04.02.2015, but the same was also left for default. Thereafter, the petitioner preferred I.A.No.123 of 2020 with a delay of 1287 days to restore I.A.No.238 of 2015.

3. The contention of the revision petitioner / 1st defendant is that her Advocate could not appear in the interlocutory application before the Trial Court, since the Advocate had renal failure and he was undergoing treatment, subsequently died. Further, the revision petitioner was not communicated properly by the Advocate hence the petitioner could not take alternative arrangements. The petitioner had stated the same in affidavit and the same is extracted hereunder:

“13.I further submit that aggrieved over the above said order passed in the above I.A. No.123 of 2020, dated 04.03.2021 I am preferring the present Civil Revision Petition before this Hon'ble Court. In this connection it is pertinent to mention that in so far as the delay is concerned, I respectfully submit that I have engaged one counsel namely Mohan a practicing advocate at Dindigul who is also related to me. He used to attend the hearings of the above suit at Periyakulam Court on all hearing dates by travelling all the way from Dindigul to Periyakulam. It appears that during 2016 my said counsel Mohan was diagnosed with renal failure and he was taking treatment for a period of 2 to 3 years. My counsel Mohan has not



even brought to my notice about his ill health. However he himself has engaged an advocate namely one Chandrasekaran to represent me in the above suit and it is pertinent to state that he is a practicing advocate at Periyakulam Court itself. In the meanwhile, unfortunately my counsel Mohan died due to his continued ill health. In such circumstances, the restoration Petition filed by me was dismissed by the court.”

The petitioner herein has also stated the same reason before the Trial Court. However, the Trial Court disbelieved the case of the revision petitioner. When the revision petitioner has come out with a clear submission that the Advocate was undergoing treatment and subsequently died, the Trial Court has erred in not accepting the same. The delay may be huge but it ought to be condoned with a condition.

4. Therefore, this Court is of the considered opinion that the impugned order is liable to be set aside. The revision petitioner is directed to pay Rs.2,000/- to the Saksham, an institution helping the physically challenged people. On such payment, the Trial Court is directed to restore the original suit and complete the



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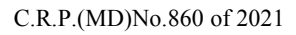
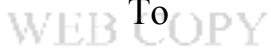
proceedings within a period of one year from the date of receipt of payment. The Trial Court shall restore the suit and the parties shall contest the suit as per law.

5. With the above said observations, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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1. District Munsif Court,
Periyakulam.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
3. The Sub Registrar,
Sub Registrar Office,
Kanavaipatti Road,
Batlagundu,
Nilakkottai Taluk,
Dindigul District.
4. The District Collector,
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S.SRIMATHY, J.

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