



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No. 1336 of 2024

and

C.M.P(MD)No. 7735 of 2024

1. Sharmila Vallavarayi

2. Sathishkumar Fernand

...Petitioners

Vs.

A.Princeveld Fernand

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for the records of the Lower Court and allow this Revision Petition and set aside the Order dated, 22.04.2024 in I.A.No.35 of 2023 in unregistered A.S. On the file of the Sub Court, Thiruchendur.

For Petitioners : M/s.V.Ramakrishnan

For Respondent : Mr.M.P. Senthil



WEB COPY

ORDER

This Civil Revision Petition is filed by the defendants in the suit to set aside the Order dated, 22.04.2024 passed in I.A.No.35 of 2023 in unnumbered A.S. on the file of the Sub Court, Thiruchendur.

2. The defendants in the suit are the revision petitioners herein and the plaintiff in the suit is the respondent herein. For the sake of convenience, the parties are referred to as plaintiff and the defendants.

3. The plaintiff has filed a suit in O.S.No.11 of 2018 for declaration injunction and monetary injunction to remove the compound wall and 10 feet of the residential building belonging to the plaintiff. After receiving the notice in the suit, the defendants had entered appearance and filed written statement and contested the suit. The trial Court has considered the issue on merits and the suit was decreed in favour of the plaintiff. Aggrieved over the same, the defendants



WEB COPY

had handed over the papers to the Advocate for preferring appeal suit. In the meanwhile, the plaintiff had filed the Execution Petition. The plaintiff had engaged the same counsel to appear for the Execution Petition also.

4. According to the defendants, the Advocate had colluded with the plaintiff and failed to file an appeal. And in the EP proceedings also the Advocate has failed to contest properly. In the meanwhile, in order to satisfy the decree and to execute the decree the compound wall was demolished however the defendants had resisted to demolish the portion of the house.

5. Thereafter, the defendants have changed their Counsel and given change of vakalat to prosecute the appeal suit. The new counsel had filed I.A.No. 35 of 2023 in unnumbered AS. The petition in I.A.No.35 of 2023 was filed to condone the delay of 1626 days in filing the appeal suit. After considering the said IA, the Appellate Court has held the allegation against the Advocate cannot be accepted and dismissed the petition. Aggrieved over the same, the present Civil Revision Petition is filed.



WEB COPY

6. The contention of the defendants is that the Counsel engaged by them had not filed the appeal at all. Whenever the same was questioned the Counsel had given some reasons and the defendants believed the Counsel and believed the reasons stated by the Counsel and had waited for more than 3 years. Thereafter, when the Counsel failed to file the appeal suit and also failed to represent the EP properly, the defendants had changed the Counsel and had filed the IA to condone the delay. If the same is not considered, serious prejudice will be caused to the defendants and the portion of their residence would be demolished. On the other hand, the plaintiff submitted that the defendants have entered appearance in E.P and they are aware of the exparte decree of the suit, hence they should be vigilant in filing the appeal in time. After hearing the rival submission, this Court is of the considered opinion, since it is the case of demolition, the defendants ought to be granted an opportunity. Therefore, this Court is inclined to condone the delay and restore the Appeal Suit on file. The Appellate Court is directed to number the appeal suit and hear the same on merits.



WEB COPY

7. Accordingly, this Civil Revision Petition is allowed by setting aside the order dated, 22.04.2024 passed in I.A.No.35 of 2023 in unregistered A.S. Therefore, the Learned Sub Judge, Thiruchendur, is directed to number the Appeal suit and hear the appeal suit on merits and pass Judgment, within a period of 8 months, from the date of receipt of a copy of this Order. No Costs. Consequently, connected miscellaneous petition is closed.

30.10.2024

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

To

1. The Sub Court, Thiruchendur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.SRIMATHY, J.

KSA

Order made in
C.R.P(MD)No.1336 of 2024

30.10.2024