



C.R.P.(MD)No.1151 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Alibaba(died)

1.Rafeeka Banu

2.Samsu Aalam

3.Ansari

4.Sahib

5.Hyer Nisha

6.Mohamed Rafeek

7.Mohamed Subukhan

... Petitioners

Vs.

Selvam Dalmetha (died)

William Dalmetha(died)

1.Henri Dalmetha

2.Gurusamy

3.Rajendran

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4.Kanagavel

5.Sundaravadivelu

6.Seldan Dalmetha

7.Johnson

8.Rajjan

9.Anandan

10.Karunakaran

11.Mahiban

12.Darvin (died)

13.Premarathi

14.Poongodi

15.Thangarani

16.Jeyaseeli

17.Josephin

18.Edison Dalmetha

19.Revathi

20.Vimala

21.Wilson

22.Nelson

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23. Ananthi

24. Nixon

25. Bakkiavathi

26. Akilan

27. Doling

28. Alwin

29. Jersin

30. Jersulin

... Respondents

(Respondent Nos.27 to 30 are brought on record as Lrs of the deceased 12th respondent vide Court order dated 02.02.2024 made in C.M.P.MD).Nos.14209, 14222 and 14226 of 2023 in C.R.P.(MD).No. 1151 of 2017 by CKJ)

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 19.04.2017 made in I.A.No.30 of 2007 in O.S.No.17 of 2002, on the file of the District Munsif Court, Muthukulathur, and allow this revision.

For Petitioner : Mr.S.Srinivasaraghavan

For Respondents : Mr.V.Janakiramulu for
R1, R19, R20, R23 to R26
: No appearance for R2 and R3
: R4 to R11 and R13 to R18- Given up
: R12 Died



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decretal order dated 19.04.2017 made in I.A.No.30 of 2007 in O.S.No. 17 of 2002, on the file of the District Munsif Court, Muthukulathur.

2.The plaintiff is the revision petitioner,.He filed a suit in O.S.No. 17 of 2002 on the file of the District Munsif Court, Muthukulathur for declaration and injunction against the respondents/defendants herein. The said suit was listed for trial on Special List on 22.06.2016. On the said day, the junior counsel appearing for the plaintiff requested the Court to give adjournment on the ground that his learned Senior Counsel was out of station. Without accepting the same, the learned trial Judge dismissed the same for default. Challenging the same, he filed a petition in I.A.No.30 of 2007 to condone the delay of one day in restoring the suit. The same was also dismissed by the learned trial Judge. Aggrieved over the same, the plaintiff filed this petition before this Court.

3.In the order passed in I.A.No.30 of 2007, it was stated that the petitioner had not re-presented the papers within a period of six months.



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Hence, he dismissed the petition filed for condonation of delay of 1 day.

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4. The learned counsel for the defendants/respondents stated that the suit was pending for number of years. Even though, adequate opportunity was given to the petitioner to proceed the case, no effort was taken on the part of the plaintiff/petitioner. Hence, the learned trial Judge has rightly dismissed the petition filed for condoning the delay.

5. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

6. The reasons assigned by the learned trial Judge to condone the delay of one day stating that a period of six months was taken by the learned counsel to re-present the paper filed to restore the suit with a delay of one day, itself shows that there is a *bonafide* intention in prosecuting the suit. In the said circumstances, this Court is inclined to set aside the order on the ground that the delay of one day, which was properly explained and considering the nature of the suit for declaration and injunction, this Court is inclined to set aside the I.A.No.30 of 2007.



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7. Accordingly, this Civil Revision Petition stands allowed in the following terms:

(i)The impugned order passed in I.A.No.30 of 2007 in O.S.No.17 of 2002, dated 19.04.2017 by the learned District Munsif, Mudukulathur is hereby set aside with a condition to the petitioner to pay a sum of Rs.5,000/- to Mr.V.Janakoramulu, learned counsel appearing for the respondent Nos.1, 19, 20, 23 to 26, within a period of two weeks from the date of receipt of a copy of this order.

(ii)Considering the pendency of the suit, which was filed way back in the year 2002, this Court *suo-motu* restores the suit itself and the learned trial Judge is hereby directed to dispose of the suit in O.S.No.17 of 2002 within a period of six months from the date of receipt of a copy of this order.

(iii)The learned counsel for the respondent submitted that after the dismissal order the Court bifurcation has taken place. As on date, the learned Judicial Magistrate, District Munsif Court, Kadaladi has the jurisdiction. Hence, the learned Principal District Judge, Ramanathapuram is directed to transmit the entire records to the learned District Munsif-Cum-Judicial Magistrate, Kadaladi and the learned



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District Munsif-Cum-Judicial Magistrate, Kadaladi is directed to dispose of the same within a period of six months thereafter.

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NCC :Yes / No
Index :Yes / No
Internet :Yes / No
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To.

The District Munsif Court, Muthukulathur



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K.K.RAMAKRISHNAN, J.

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