



C.R.P.(MD)No.3152 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.3152 of 2023
and C.M.P.(MD).No.16186 of 2023

John Ramesh (Died)

1.J.Sasikala

2.Minor SJ.Vettriselvan

(Minor 2nd Petitioner represented by his mother)

... Petitioners/2nd and 3rd Petitioners/

2nd and 3rd Appellants

Vs.

S.Pathinathan

... Respondent/Respondent/Respondent

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order dated 12.07.2023 passed in I.A.No.1 of 2021 in A.S.No.70 of 2015 on the file of the Additional District Judge, Dindigul.

For Petitioner : Mr.A.Arul Jenifer

For Respondent : Mr.G.Gomathi Sankar



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ORDER

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This revision has been preferred against the order of dismissal passed by the Appellate Court.

2.The petition was filed by the petitioners herein to restore the appeal which was dismissed for default. There was a delay of 94 days in filing the petition to set aside the dismissal order. The learned counsel for the petitioners submitted that the main suit was filed by the respondent seeking relief of specific performance, that was decreed. Against which appeal was preferred by the husband of first petitioner in the year 2015. Pending the appeal process he died. Later these petitioners were brought on record as his legal heirs. At that time they could not contact their Advocate, because of the commencement of the pandemic period. Because of that only there was a delay. But, it got dismissed. Aggrieved over the same the present petition came to be filed.

3.Per contra, the learned counsel for the respondent would submit that this is a second default committed by the appellant. First default was made by the husband of the first petitioner during his life time. Later that



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appeal was restored to file and thereafter only he died. Again also when the petitioners brought on record, they remained absent. Second default occurred. Considering the oldness of the matter, according to the respondent, no interference is called for. But, however, considering the fact that the original suit is one for specific performance and these petitioners are brought on record subsequent to the death of the father and there is only 94 days delay, this Court is of the considered view that it may be compensated by way of cost. If the petition is dismissed, then loss will be on the petitioners' side.

4.On that ground, the revision is allowed on payment of cost of Rs.10,000/- (Rupees Ten Thousand only). The cost must be paid by the petitioners to the respondent within a period of fifteen days from the date of receipt of a copy of this order. After payment of cost, the appeal shall be restored and disposed of, within a period of 3 months thereafter. The parties must co-operate to dispose the main appeal itself. Consequently, connected miscellaneous petition is closed.

21.02.2024

Index : Yes / No
Internet : Yes / No
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To

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- 1.The Additional District Judge, Dindigul.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

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