



C.R.P.No.3244 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3244 of 2022
and C.M.P.Nos.17223 &17899 of 2022

1. R.M.S.Vasantha
2. R.M.Sethuraman

... Petitioners

Vs

1. Zareena Begaum
2. Aziz Ahmed

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, pleaded to set aside the fair and decreetal order in I.A.No.87 of 2021 dated 15.12.2021 in unnumbered A.S.No.....of 2021 passed by the learned Principal District Judge, Pondicherry.

For Petitioners : Ms.G.Thamizharasi
for M/s. Giridhar and Sai
For Respondents : Mr.N.Suresh

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Principal District Judge, Pondicherry, in I.A.No.87 of 2021 in unnumbered A.S.No.....of 2021 on 15.12.2021.



C.R.P.No.3244 of 2022

2. The brief facts of the case is that the petitioners are the defendants in the suit filed by the respondents/plaintiffs before the Additional Sub Court, Pondicherry, in O.S.No.146 of 2009 seeking for declaration and recovery of possession. The trial Court, after a full fledged trial, had passed a judgment and decree on 11.10.2018. Thereafter, the petitioners/defendants had filed an application in I.A.No.87 of 2021 under Order XLI Rule 3A of CPC r/w Section 5 of the Limitation Act, seeking to condone the delay of 431 days in filing the Appeal. The petitioners/plaintiffs, who are husband and wife, had contended that the second petitioner/husband was taking care of the case and since he was suffering from foot cellulitis due to acute diabetes, he was unable to file the appeal within time, thereby, there had been a delay. The appellate Court, holding that though it is the second petitioner, who was suffering from foot cellulitis, no documentary evidence had been filed to prove the same and that the first petitioner could have file the appeal, had dismissed the application vide order dated 15.12.2021. Aggrieved over the same, the present revision petition has been filed by the petitioners.

3. Learned counsel for the petitioners submitted that the second petitioner/husband, who was taking care of the case, was suffering from foot



cellulitis and since he was continuously taking treatment for diabetes, he was unable to file the appeal in time. She further submitted that since the first petitioner/wife was taking care of her husband/second petitioner, she was unable to instruct the counsel to file an appeal and subsequently, she was also fell ill, thereby, there had been a delay of 431 days, whereas, the appellate Court, though the petitioners have shown sufficient cause for the delay, had dismissed the application. She has also filed the documents to show that the petitioners were taking treatment. She also submitted that in the interest of justice, this Civil Revision Petition may be allowed, on fixation of terms and cost.

4. Per contra, the learned counsel appearing for the respondents submitted that the suit, which was filed in the year 2009, came to be decreed on 11.10.2018 and subsequently, the execution petition filed by the respondents was ordered. Thereby, the respondents have also taken possession of the suit property on 16.12.2022 and the same was recorded and the execution petition was terminated. He further submitted that though the petitioners claim that they were suffering from acute diabetes, they have not filed any documents to establish the same and the appellate Court had rightly dismissed the application. Hence, he objected for setting aside the order passed by the appellate Court.



5. At this juncture, the learned counsel for the petitioner submitted that the petitioners have a good case on merits and in the event of the petitioners succeeding the appeal, there is every possibility for the petitioners to take re-possession of the suit property. She further submitted the petitioners also undertake to compensate the respondent with suitable cost.

6. Heard both sides and perused the materials available on record.

7. It is seen that the appellate Court finding that the petitioners have not filed any documentary evidence to show the ailments of the second petitioner and further holding that the first petitioner, who is the wife of the second petitioner could have filed the appeal in time, had dismissed the application. However, now the petitioners have filed their medical reports before this court to show that the second petitioner was suffering from serious ailments of foot cellulitis. Therefore, this Court is of the opinion that the petitioners have shown sufficient cause for condoning the delay of 431 days and thereby, the delay is condoned and an opportunity may be given to the petitioners in the interest of justice to contest the appeal, on imposition of terms and cost.



C.R.P.No.3244 of 2022

8. In view of the above, this Civil Revision Petition stands allowed and the order passed by the Principal District Court, Pondicherry in I.A.No.87 of 2021 in unnumbered A.S.No.....of 2021 on 15.12.2021 is hereby set aside and the petitioners shall deposit a sum of **Rs.2,000/-** before the appellate Court to the credit of I.A.No.87 of 2021 as costs to be paid to the respondents within a period of **two weeks** from the date of receipt of a copy of this order. On such deposit being made by the petitioners and production of proof, the appellate Court shall number the appeal and decide the same in accordance with law. The costs shall be disbursed to the respondents on their appearance in the appeal. Consequently, connected miscellaneous petitions are closed.

05.02.2025

Note : Registry is directed to return the original papers to the counsel for the petitioners forthwith.

Index : Yes / No

Neutral Citation : Yes / No

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To : The Principal District Court, Pondicherry.



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C.R.P.No.3244 of 2022

A.D.JAGADISH CHANDIRA, J.

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