



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(MD).No.383 of 2015 (PD)

and

M.P.(MD).No.1 of 2015

S.Rakkammal (died)

Mariamammal

... Revision Petitioner/Respondents/Plaintiffs

vs.

1.Karuppayee

2.Kannammal

... Respondents 1&2/Petitioners/Defendants

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the ex-order and the fair order dated 18.11.2014 in I.A.No.312 of 2007 in O.S.No.516 of 1986 on the file of the III Additional Sub Court, Madurai.

For Petitioner : Mr.V.Nagendran

O R D E R

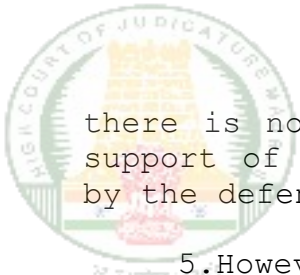
The plaintiffs have filed the above revision, challenging the order, condoning the delay of 2 days in filing the petition to set aside the ex-parte decree and to restore the suit in O.S.No.516 of 1986.

2.The suit is filed for partition. The defendants appeared before the Court through their counsel and filed their written statement. The suit was set ex-parte on 06.11.2003 and in filing the application to set aside the same, there was a delay of 2 days and the defendants filed an application to condone the same and in the affidavit, it is stated that during the pendency of the suit, the plaintiffs had approached the defendants for settlement out of Court and assured to withdraw the suit and the suit was dismissed for default on 06.12.1989. The reasons submitted by the defendants were that they were under impression that since the matter was settled out of Court, the plaintiffs allowed the suit to be dismissed for default. However, they received a notice in I.A.No.435 of 2004, which was filed by the plaintiffs, for passing of a final decree. Thereafter, on verification, it was found by them that the suit was restored to file again on 15.09.2000 in I.A.No.290 of 1993 and the respondents were also set ex-parte on 06.11.2003. According to the defendants, the suit was dismissed for default and no notice was sent to the defendants or or after the restoration of the suit. They received the notice only on the final decree application.

3.According to the defendants, they came to know about the knowledge of restoration of the suit and passing of an ex-parte decree only on 19.08.2005. Hence, they had filed an application to set aside the ex-parte decree. However, there was a delay of 2 days.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The said application was resisted by the plaintiffs contending that



there is no reason assigned by the plaintiffs in the affidavit filed in support of the petition for condonation of delay. The explanation given by the defendants are unacceptable and, therefore, prays for dismissal.

5. However, the Additional Sub Court, Madurai had allowed the application condoning the delay of 2 days. Aggrieved by the same, the petitioners filed the above revision.

6. Though the petitioners/plaintiffs had approached this Court for dismissal of the application for condonation of delay, it has not been stated as to whether any notice was served on the defendants at the time of restoration of the suit in the year 2000. No doubt, it is axiomatic that the condonation of delay is the discretion of the Court. The length of the delay is not a matter only the acceptability of the explanation is a important.

7. The learned counsel for the petitioner only contended that while allowing the application for condonation of delay. The application for setting aside was also allowed. If that is so, the same could be challenged not before this Court. As it is time and again held by this Court as well as the Supreme Court that in matters, like setting aside the ex-parte decree with a delay, a liberal and pragmatic approach should be there. However, negligence has to be taken note of.

8. In this case, when the plaintiffs have not established the service of notice after the restoration of the suit, the defendants have come out with the application for condonation of delay only of 2 days, which can be condoned. The reasons given by the defendants are also acceptable. Therefore, allowing the application in condoning the delay by the trial Court, does not warrant any interference by this Court.

9. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To
The III Additional Subordinate Judge,
Madurai

+1cc to Mr.V.Nagendran, Advocate in SR.No.10086

sm:26.03.2015:2P/3C

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