

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.463 of 2011
and
M.P.No.1 of 2011

1.Thambusamy Naidu
2.Kalaimani
3.Kumar

... Petitioners

vs.

Narayanasamy Naidu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order of the District Munsif, Gingee in I.A.No.449 of 2010 in O.S.No.7 of 2008 dated 3.11.2010 and consequently, allow I.A.No.449 of 2010 in O.S.No.7 of 2008.

For Petitioners : Mr.Bharatha Chakravarthy
for M/s.Sai Bharath Ilan

For Respondent : Mrs.N.Mala

ORDER

This Civil Revision Petition arises against the fair and decretal order dated 03.11.2010 passed by the District Munsif, Ginee, in I.A.No.449 of 2010 in O.S.No.7 of 2008.

2. The respondent herein filed a suit in O.S.No.7 of 2008 on the file of the District Munsif, Gingee, praying for declaration and recovery of

possession of the suit schedule property.

3. On the other hand, the third defendant/third revision petitioner resisted the suit and filed a written statement denying the averments made in the plaint.

4. When the suit was taken up for enquiry, the defendants did not appear before the Trial Court inspite of summoning them and therefore, the Trial Court set them *exparte* and passed Decree in the suit in O.S.No.7 of 2008 as sought for by the plaintiff by order dated 5.8.2008. On the basis of this Decree, the plaintiff/respondent filed an Execution Petition and served notice on the defendants/revision petitioners.

5. On receipt of such notice, the defendants/revision petitioners filed an Interlocutory Application in I.A.No.449 of 2010 on the file of the Principal District Munsif, Gingee, praying to condone the delay of 553 days caused in filing a petition to set aside the *exparte* decree and to proceed with the case.

6. Upon hearing the learned counsel appearing for the parties and considering the evidence adduced in the case, the Principal District Munsif, Gingee, while observing that the applicants/revision petitioners 2 and 3 had not given any explanation for the delay arose from 22.1.2009 to 11.03.2010 and they failed to prove that the delay was caused due to unavoidable

circumstances and also failed to adduce sufficient reasons for condoning the delay, dismissed the Interlocutory Application in I.A.No.449 of 2010. Aggrieved by this order, the defendants/revision petitioners have filed the present Civil Revision Petition.

7. Mr.Bharatha Chakravarthy, learned counsel appearing for the revision petitioners would submit that patta relating to the suit property was granted in favour of the revision petitioners and they have been in possession of the property and therefore, an opportunity of hearing should be given to the revision petitioners in the case, otherwise, irreparable prejudice will be caused to them.

8. On the contrary, Mrs.N.Mala, learned counsel appearing for the respondent would submit that the revision petitioners were aware of the *exparte* decree and even though the third petitioner appeared before the Executing Court on 22.1.2009, he had not chosen to file any Application to set aside the *exparte* decree dated 5.8.2008, immediately, and that the petitioners had not given any explanation for the delay arose from 22.1.2009 to 11.3.2010 and that each and every day's delay had not been explained and therefore, the Principal District Munsif, Gingee, has rightly dismissed the Interlocutory Application and no interference is warranted by this Court at this stage and therefore, the Civil Revision Petition may be dismissed.

9. Heard Mr.Bharatha Chakravarthy, learned counsel appearing for the petitioners and Mrs.N.Mala, learned counsel appearing for the respondent and perused the records.

10. Considering the submissions made by the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and considering the facts of the case, this Court is of the view that the revisions petitioners/defendants should not be deprived of affording an opportunity of hearing and they should be allowed to prove their case and therefore, in the interest of justice, this Court is inclined to condone the delay of 553 days caused in filing the petition to set aside the *exparte* decree but on certain terms.

11. ***In Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay.

12. Subsequently, the ratio laid down in the said judgment has been applied by this Court in ***Ajay Kumar Gulecha Vs. J.Vijayakumar and another [2015 (1) CTC 811]***.

13. Therefore, following the ratio laid down in the said judgments and in the light of the above discussion, this Court is inclined to pass the following orders:-

(i) The impugned fair and decretal order dated 3.11.2010 passed in I.A.No.449 of 2010 in O.S.No.7 of 2008 is set aside and the delay of 553 days, as stated above, is condoned on condition that the revision petitioners should pay a sum of Rs.10,000/- towards costs to the learned counsel appearing for the respondent within one week from today, failing which, this order stands automatically vacated.

(ii) On making such payment, the revisions petitioners are directed to take steps to number the Application filed to set aside the exparte Decree.

(iii) In the event of allowing such Application, the Trial Court is directed to dispose of the suit in O.S.No.7 of 2008 within six months from the date of receipt of a copy of this order on merits and in accordance with law.

14. In the result, the Civil Revision Petition is allowed as indicated above. The Connected Miscellaneous Petition is closed. No order as to costs.

List the matter for reporting compliance on 29.04.2016.

22.04.2016

Index : yes / no

Internet :yes / no

asvm

Note to Office

Issue order copy on 27.04.2016

To

The Principal District Munsif,
Gingee.

D.KRISHNAKUMAR, J.

(asvm)

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