

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD).No.1165 of 2012  
and  
M.P.No.1 of 2012

Athayee .. Petitioner

Vs

1.M.Manickam  
2.The Executive Engineer,  
Tamilnadu Slum Development Board,  
Coimbatore. .. Respondents  
(The 2nd respondent was given up  
in this CRP)

**Prayer:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and final order dated 03.02.2012 made in I.A.No.695 of 2011 in O.S.No.754 of 2008, on the file of the 1st Additional District Munsif, Coimbatore.

Petitioner : Mr.S.Lakshmanasamy  
Respondent: Mr.G.Rajan (for R1)  
R2 - Given up

**ORDER**

The first defendant is the revision petitioner before this Court.

2.Originally the suit was posted on 07.11.2008 for filing of written statement by the petitioner / first defendant as last chance. But, due to the old age, continuous illness and her health condition, the petitioner was unable to meet her counsel and give instructions to draft the written statement and file the same before the Court. Therefore, the case was posted for filing written statement on 07.11.2008. Thereafter, the exparte decree was passed on 19.12.2008. Challenging the exparte decree, the petitioner / first defendant has filed set aside application along with I.A.No.695 of 2011 in O.S.No.754 of 2008 for condoning the delay of 641 days in filing the set aside application.

3.The respondents 1 and 2 have not filed any counter and no oral enquiry or documentary enquiry was let in by both the parties in I.A.No.695 of 2011.

4.Considering both side arguments, the learned I Additional District Munsif Court, Coimbatore, has dismissed the application on the ground that the petitioner / first defendant has not assigned any sufficient cause for the delay of 641 days. The Hon'ble Apex Court has observed that a legal right accrues in favour of one party when an order is passed against the other. So even when the first respondent has not raised any objections, the Court finds that the petitioner has not explained the delay with any plausible reasoning, much less to the satisfaction of the Court and hence he dismissed the petition. Challenging the said order, the first defendant has filed the civil revision petition before this Court.

5.I heard Mr.S.Lakshmanasamy, learned counsel appearing for the petitioner and Mr.G.Rajan, learned counsel appearing for the first respondent.

6.The case of the petitioner / first defendant is that originally the suit was filed by the respondent / plaintiff against this petitioner / first defendant for declaration and for permanent injunction, since the petitioner / first defendant is aged about 60 years and she was unable to approach his Advocate and give proper instructions for filing written

statement. Hence, she was set exparte and the exparte decree was passed on 19.12.2008, on the ground that this petitioner/ defendant has not appear before the Court and not filed the written statement.

7.The learned counsel appearing for the petitioner / first defendant states that due to continuous illness and of her health condition, since her aged about 60 years, she could not approach her Advocate in time and filed the written statement as directed by the trial Court. Therefore, she has filed the above set aside application along with the condone delay application in I.A.No.695 of 2011 for condoning the delay of 641 days.

8.It is an admitted fact that the respondent / plaintiff has not filed any counter statement in the said application. But, even then the learned Judge has dismissed the application. Though the petitioner / first defendant is aged about 60 years, due to her ill-health, she could not able to approach her Advocate by giving instructions to file the written statement. The reason given by the petitioner/first defendant is acceptable one. If the petition is allowed no prejudice would be caused on the respondent/plaintiff. Apart from this, this Court and the Hon'ble Apex Court very categorically held that liberal approach to be

made while the condone delay application is consider.

9. Therefore, in the interest of justice to give one more opportunity to the petitioner / first defendant, I am inclined to allow this application on condition that the petitioner should pay a sum of Rs.2,000/- to the Mediation and Conciliation Centre, Madras High Court.

10. Hence, I am inclined to pass the following orders:

(a) this civil revision petition is allowed by setting aside the order in I.A.No.695 of 2011 in O.S.No.754 of 2008, dated 03.02.2012, on the file of the I Additional District Munsiff Court at Coimbatore, on condition that the petitioner should pay a sum of Rs.2,000/- to the Mediation and Conciliation Centre, Madras High Court, within a period of two weeks from the date of receipt of a copy of this order;

(b) the trial Court is further directed to number the set aside application and pass orders within a period of one month by giving notice to

both parties; and

(c)on passing the order in the set aside petition, the trial Court is directed to dispose the suit in O.S.No.754 of 2008, within a period of 3 months thereafter and both the parties hereby directed to co-operate for the early disposal of the suit without getting adjournment.

11.In the result, the civil revision petition is allowed with cost.  
Consequently, connected miscellaneous petition is closed.

09.08.2016

Note:Issue order copy on 21.12.2016.

vs

Index:Yes/No.

Internet:Yes/No

To

The 1st Additional District Munsif,  
Coimbatore.

**M.V.MURALIDARAN,J.**

VS

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and  
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