

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD).No.2651 of 2016  
and C.M.P.No.13651 of 2016

R.Saguntala

... Petitioner

Vs.

1.Kaliyaperumal

2.Tamizharasan

3.Durairajan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 22.04.2016 made in I.A.No.158 of 2015 in O.S.No.4 of 2013 on the file of the Subordinate Court, Mannargudi.

For Petitioner : Mr.M.S.Subramanian

For Respondents : Mr.J.R.K.Bhavanandham  
for Mr.P.B.Ramanujan

**ORDER**

Challenging the fair and final order passed in I.A.No.158 of 2015 in O.S.No.4 of 2013 on the file of the Subordinate Court, Mannargudi, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.4 of 2013 for declaration and permanent injunction.

3.The defendants filed their written statement and were contesting the suit.

4.When the suit was taken up for trial and when the suit was posted for the cross examination of P.W.1, the defendants remained absent before the trial Court. Hence, the trial Court passed an exparte decree on 16.09.2014.

5.Thereafter, the defendants filed an application in I.A.No.158 of 2015 in O.S.No.4 of 2013 to condone the delay of 183 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, the defendants have stated the reasons for the delay of 183 days. The averments stated in the affidavit filed in support of the petition were disputed by the plaintiff in her counter. The trial Court, taking into consideration the case of both parties, condoned the delay of 183 days in filing the application to set aside the exparte decree on payment of costs of Rs.4,000/-. Against this order, the plaintiff has filed the above Civil Revision Petition.

6.Heard Mr.M.S.Subramanian, learned counsel appearing for the petitioner and Mr.J.R.K.Bhavanandham, learned counsel appearing for the respondents.

7.Mr.M.S.Subramanian, learned counsel appearing for the petitioner submitted that the only issue that arises for consideration in this Civil Revision Petition is with regard to the maintainability of the application filed by the defendants to set aside the exparte decree passed by the trial Court.

8.On a perusal of the judgment passed by the trial Court, it could be seen that the judgment was pronounced on merits under Order 17 Rules 1 & 2 of the Civil Procedure Code. It is settled position that if the judgment is passed under Order 17 Rules 1 & 2 of the Civil Procedure Code, provisions of Order 9 are applicable and if the judgment is passed under Order 17 Rule 3 of the Civil Procedure Code, only an appeal is maintainable. Since the trial Court has stated that the judgment is passed under Order 17 Rules 1 & 2 of the Civil Procedure Code, the application filed by the defendants under Order 9 Rule 13 of the Civil Procedure Code is maintainable. Since the petitioner has satisfactorily explained the reasons for the delay in the

affidavit filed in support of the petition, the trial Court has rightly condoned the delay on payment of Rs.4,000/-.

9.In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

10.Since the suit is pending from the year 2013 and the same is at the stage of trial, I direct the Subordinate Judge, Mannargudi to dispose of the suit in O.S.No.4 of 2013, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No  
Internet : Yes  
va

**30.08.2016**

To

The Subordinate Court,  
Mannargudi.

**M.DURAIWAMY,J.**  
va

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**30.08.2016**