



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2009 of 2015 (NPD)

and

M.P. (MD) .2 of 2015

1.Sukumar
2.Krishnaveni

.. Petitioners

Vs.

Sundarajan

.. Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 07.02.2014, made in I.A.No.1055 of 2012 in O.S.No.148 of 2007, on the file of the District Munsif Court, Musiri.

For Petitioners : Mr.R.Vijayakumar

ORDER

This memorandum of Civil Revision Petition has been filed against the fair and decretal order dated 07.02.2014, made in I.A.No.1055 of 2012 in O.S.No.148 of 2007, on the file of the District Munsif Court, Musiri.

2. The petitioners are the defendants and the respondent is the plaintiff in the Suit. The respondent filed the Suit in O.S.No.148 of 2007, for recovery of money. The petitioners did not file written statement. They were said ex-parte and thereafter an ex-parte decree was passed on 31.07.2007. The petitioners filed an application to set aside the ex-parte decree along with I.A.No.1055 of 2012 to condone the delay of 1767 days in filing the application to set aside the ex-parte decree.

3. According to the petitioner, the first petitioner was suffering from jaundice and he was taking country treatment. Doctors advised him not to go out of home for three months. After he recovered from illness, he went to Karur to look after the business. Therefore he could not file written statement in time. In January 2012, he came to his village and contacted his advocate and came to know ex-parte decree. Immediately he filed petition to set aside the ex-parte decree, along with the petition



to condone the delay in filing. The delay in filing petition is neither wilful nor wanton and they have good case on merits.

4. The respondent filed counter affidavit and stated that the petitioner has not given any reason for the delay. According to the respondent, the petitioner is residing in the same village and doing his business and he was hale and healthy. Even according to the petitioner, he suffered from jaundice only for three months and afterwards, he went to Karur to carry on business. The reasons given by the petitioner is contrary to the facts.

5. The learned Judge considering the fact and materials on record, dismissed the application. Against the said order of dismissal, the present Civil Revision Petition has been filed.

6. The learned counsel for the petitioners submitted that the petitioners have fair chance of success in the suit and they must be given an opportunity to contest the suit on merits. The learned Judge failed to consider the reasoning given by the first petitioner.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. The petitioners have not given any valid reason for the delay of 1767 days in filing the application, even if the statement of the first petitioner that he was suffering from jaundice is correct, he was suffering only for three months. Subsequently, admittedly, he was carrying on his business at Karur. The learned Judge considered all these facts and the respondent as PW1 admitted that after the first petitioner recovered from jaundice he was carrying on his business at Kerala. The petitioners were not vigilant enough to conduct their case. It is well settled that length of delay is not a criteria, but the attitude of the parties must be bonafide and in this case, the petitioners have not given valid reason and not proved their bonafide. In the circumstances, the order of the learned Judge does not warrant interference by this Court.

9. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



PJL

To

The District Munsif Court, Musiri.

GJM/SKS/RR/SAR-I_3.6.16-3p-2C

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