



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2016

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.604 of 2016
and
C.M.P. (MD) .No.2730 of 2016

1. Jose
2. Alexander

... Petitioners/Petitioners/
Defendants 3 & 4

Vs.

1. Chellappan

2. Selvaraj

3. The Superintending Engineer,
Tamil Nadu Electricity Board
Kanyakumari Circle,
Vadasery Village,
Nagercoil, Kanyakumari District.

3. The Junior Engineer,
Tamil Nadu Electricity Board (Distribution)
Eravipudhoor Kadai,
Kattathurai Post,
Vazvachagostam Village,
Kalkulam Taluk,
Kanyakumari District.

... Respondents/Respondents/
Plaintiffs 1 & 2/Defendants 1 & 2

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair order and decreetal order dated 18.12.2015 made in I.A.No.1379 of 2014 in O.S.No.264 of 2003 on the file of the Principal District Munsif, Padmanabhapuram.

For Petitioners : Mr.M.Dennis Joe

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 18.12.2015 made in I.A.No.1379 of 2014 in O.S.No.264 of 2003 on the file of the Principal District Munsif, Padmanabhapuram.



2.The petitioners are the defendant Nos.3 and 4. The first and the second respondents filed a suit in O.S.No.264 of 2003 for permanent and mandatory injunction. The petitioners were impleaded as the defendant Nos.3 and 4 in the year 2012. They entered appearance through Advocate and they did not file any written statement and contested the suit. The defendant Nos.1 and 2 contested the suit and the said suit was decreed on 04.08.2014. Thereafter, the petitioner filed application to set aside the ex-parte decree along with I.A.No.1379 of 2014 to condone the delay of 44 days in filing the application to set aside the ex-parte decree.

3.According to the petitioners, the first petitioner is working at Kerala and the second petitioner is a physically challenged person. Their Advocate did not inform them about the date of hearing and hence, they did not file written statement and contested the suit.

4.The respondent Nos.1 and 2 filed counter affidavit and denied the averments made by the petitioners. According to the respondents, the respondent Nos.1 and 2 stated that the first petitioner is residing at same village and the second petitioner is hale and healthy. The reasons given by the petitioners are not valid. The suit was decreed and contested by the respondent Nos.1 and 2. Therefore, the same cannot be termed as ex-parte decree.

5.The learned Judge considered all the facts and materials on record, dismissed the application filed by the petitioners. Against the said order of dismissal, the present civil revision petition is filed.

6.The learned counsel for the petitioner contended that the petitioners have shown sufficient reasons for condoning the delay of 44 days. He further submitted that an opportunity must be given to the petitioners so as to conduct the case on merits.

7.The learned counsel appearing for the petitioners placed reliance on the following judgments:

(i)In BANK OF INDIA V. MEHTA BROTHERS AND OTHERS reported in (2008) 13 Supreme Court Cases 466.

(ii)In BHATHARNISHA BEEVI V. CHELLAAMMAL reported in 2014(3) MWN (Civil) 360.

8.I have heard Mr.M.Dennis Joe, learned counsel appearing for the petitioners and carefully perused the entire materials on record.

<https://hcservices.courts.gov.in/hcservices>
9.The provisions relating to set aside the ex-parte decree is Order 9 Rule 13 C.P.C., which reads as follows:

"13.Setting aside decree ex parte against defendant.-



In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]"

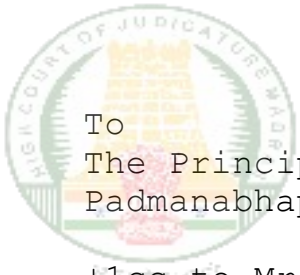
10.As per the rule, ex-parte decree can be set aside if the summons are not served on the defendants or the defendants show sufficient cause to set aside the ex-parte. In the present case, the suit summons were served on the petitioners and they have entered appearance through Advocate. The reasons given by the petitioners is that their Advocate did not inform the date of hearing and therefore, they did not file written statement. This is not a valid and sufficient reasons to condone the delay in filing the application to set aside the ex-parte decree. Having entered appearance through Advocate, the petitioners must putforth their case on merits. Further, the defendant Nos.1 and 2 contested the suit on merits and the suit was decreed after full-fledged trial.

11.In the circumstances, the learned Judge considered all these aspects and has rightly applied the judgements relied on by the learned counsel for the first respondent and dismissed the application. There is no reason warranting interference by this Court. The judgments relied by the learned counsel for the petitioners is not applicable to the facts of the case.

12.In the result, the civil revision petition is dismissed. No costs. Consequently, the connected C.M.P is also closed.

Sd/-

Assistant Registrar



To
The Principal District Munsif,
Padmanabhapuram.

+1cc to Mr.M.Dennis Joe, Advocate, Sr.No.15711

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