

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD). No. 4692 of 2017
and CMP.No.22059 of 2017

Sri Bannaga Parameshwara Swami Temple,
Rep.by its Hereditary Trustee
Sri-La-Sri Thirugnanasambanda
Aadheenam Madurai,
Banna Street, Thirukuvalai Taluk,
Maacherri Post, Nagapattinam District. .. Petitioner

Vs

1.K.Rasathi @ Gurunathan
2.K.Nalla Pilli @ Pannerselvam .. Respondents

PRAYER: The Civil Revision Petition has been filed under Section 115 of the Code Civil Procedure, 1908 to set aside the Order and Decreetal Order dated 21.09.2017 passed in I.A.No.1040 of 2016 in O.S.No.187 of 2015 on the file of District Munsif Court, Nagapattinam.

For Petitioner : Mr.P.S.Kothandaraman

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ORDER

This Civil Revision Petition is filed to set aside the the order dated 21.09.2017 passed in I.A.No.1040 of 2016 in O.S.No.187 of 2015 on the file of learned District Munsif, Nagapattinam.

2. The revision petitioner/plaintiff has filed a suit in O.S.No.187 of 2015 before the learned District Munsif, Nagapattinam seeking permanent injunction. The respondent herein filed an instant application in I.A.No.1040 of 2016 in O.S.No.187 of 2015 to condone the delay of 312 days in filing an application to set aside the exparte decree and the same was allowed on payment of cost of Rs.1,000/- to the respondent. Challenging the above said order, the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the petitioner submitted that the respondents are in order to drag on the matter they are not co-operating for expediting the case and they are remained absent before the Court below. Therefore, there is no bonafide reason have been made out by the respondents herein to condone the inordinate delay in filing to set aside exparte order and the order passed by the Court below is liable to be set aside.

4. On perusal of the affidavit filed by the petitioner, it is stated that the reason for non-appearance of the respondents herein was accepted by the Court below and allowed the application for setting aside the exparte decree. The revision petitioner/plaintiff has filed the suit for permanent injunction and exparte decree was passed only due to the absence of the respondents

herein. Hence, they could not attend the enquiry on the said hearing date and therefore, the court below has passed ex parte decree.

5. In the light of the decision of the Hon'ble Supreme Court in the case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*, reported in (2013) 12 SCC 649, has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay.

6. Further, the decision of the Hon'ble Supreme Court was that, while the trial court allowed the application, the Appellate Court interfered, when that is per se illegal and arbitrary. Hence, by considering the relief as prayed for in the suit and in the light of the decision of the Hon'ble Supreme Court, and in the interest of justice, the court below has rightly allowed the application.

7. Considering the facts and circumstances of the case and the decisions cited supra, there is no error warranting interference by this Court in the order passed by the Court below. This Court is inclined to pass the following order:

- i) The impugned order passed in I.A.No.1040 of 2016 in O.S.No.187 of 2015 on the file of the District Munsif Court, Nagapattinam is hereby confirmed.

D.KRISHNAKUMAR,J

kkd

ii) The Court below is directed to dispose of the suit in
O.S.No.187 of 2015 as expeditiously as possible.

8. with the above observation, this Civil Revision Petition is dismissed .
No costs. Consequently, connected miscellaneous petition is closed.

19.12.2017

Speaking/Non-speaking order

Index :Yes/No

Internet :Yes/No

To

The District Munsif Court,
Nagapattinam.

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