

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2017

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

C.R.P. (NPD) No.720 of 2017

and

C.M.P.No.3617 of 2017

1. E.Palani,
2. E.Nirmala,
3. E.Susila
4. E.Mallika
5. E.Anbunathan

.. Petitioners

Versus

Nagappan

.. Respondent

**PRAYER :** Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 17.02.2017 in I.A.No.7350 of 2015 in O.S.No.2625 of 2012 passed by the VIII Assistant City Civil Judge, Chennai.

For Petitioners : Mr.S.Parthasarathy

For Respondent : Mr.P.Thirupathi Raj

**ORDER**

The petitioners / defendants 5 to 9 in the suit have filed the present Civil Revision Petition before this Court against the fair and decreetal order dated 17.02.2017 in I.A.No.7350 of 2015 in O.S.No.2625 of 2012 passed by the learned VIII Assistant Judge, City Civil Court, Chennai.

2. The respondent/plaintiff herein has filed a suit for declaration, mandatory injunction and for direction. In the aforesaid suit, the District Collector / 2<sup>nd</sup> defendant has filed the written statement and the petitioners were set ex-parte and ex-parte decree was passed on 15.07.2014. Thereafter, the petitioners/defendants 5 to 9 have filed an application to condone the delay of 250 days in filing the application to set aside the said ex-parte decree.

3. Learned counsel for the petitioners submitted that in the said application, the petitioners have stated bonafide reasons for the delay by stating that notice has not been served in the suit nor in the execution petition filed by the respondent. Thereafter, the petitioner came to know that the ex-parte decree and order passed from their purchaser. Hence, there is a delay in filing the application to set aside the ex-parte decree.

4. The Court below, without considering the case of the petitioners, has erroneously rejected the application and therefore the present Civil Revision Petition has been filed.

5. Per contra, the learned counsel appearing for the respondent / plaintiff would submit that the Court below has rightly dismissed the

application. The reasons are also stated in the Order. Therefore, there is no warrant to interfere in the order passed by the Court below.

6. Heard the learned counsel for the petitioners as well as the learned counsel for the respondent and perused the materials placed on record.

7. It is an admitted fact that the respondent has filed the suit in O.S.No.2625 of 2012 praying for declaration, mandatory injunction and direction. It is seen from the affidavit filed in support of the said application the petitioners have not received summons in the suit or notice in the execution proceedings. Subsequently, the petitioners came to know on 20.03.2015 from their purchaser and immediately the petitioners have filed the instant application to condone the delay in filing to set aside ex-parte decree.

8. Further, in the light of the decision of the Hon'ble Supreme Court in the case of in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy and others [2013(5) CTC 547]*** wherein, the Hon'ble Supreme Court has held that the Court should be liberal while dealing with the condonation of the delay in filing set aside petition.

9. Even the Court below has held that the notice has been served only through paper publication. But without considering the contentions of the petitioners, the same was rejected. Therefore, in the interest of justice, an opportunity shall be granted to the petitioner to adjudicate the suit on merits.

10. The learned counsel for the petitioners also undertakes that the petitioners will file a written statement within two weeks, if ex-parte decree is set aside.

11. In the interest of justice, this Court feels that a reasonable costs will be imposed on the petitioner for condoning the inordinate delay to set aside the ex-parte decree.

12. Accordingly, this Court is inclined to pass the following order :-

1) The impugned order passed in I.A.No.7350 of 2015 is set aside, subject to payment of costs of Rs.2,000/- (Rupees two thousand only) to the respondent / plaintiff within a period of two weeks from the date of receipt of a copy of this Order.

2) On compliance of the above conditional order, the VIII Assistant Judge, City Civil Court, Chennai is directed to take up the application filed under Order 9 Rule 13 of Civil Procedure Code.

3) Thereafter, in the event of application is allowed, the Court below is directed to dispose of the suit in O.S.No.2625 of 2012 on merits and in accordance with law within six months from the date of disposal of the application under Order 9 Rule 13 of Civil Procedure Code.

13. Accordingly, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is also closed. No costs.

**09.06.2017**

Speaking / Non speaking order

Index : Yes / No

Internet : Yes / No

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Note : Issue order copy on or before 19.06.2017

**D.KRISHNAKUMAR, J.**

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To

The VIII Assistant Judge,  
City Civil Court, Chennai.

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