

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.924 of 2014
and
M.P.No.1 of 2014

V.Pushpalatha

... Petitioner

vs.

1. Manoharan
2. Dhananjayan
3. Mohan
4. Kuppan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.09.2013 passed by the learned District Munsif, Tirutanni in I.A.No.1000 of 2012 in O.S.No.154 of 2008.

For Petitioner : Mr.N.R.Anantharamakrishnan

For Respondents : Mr.A.K.Raghavalu
for RR1 and 3
RR2 and 4 -Served, No appearance

ORDER

The plaintiff is the revision petitioner.

2. The revision petitioner/plaintiff earlier filed a suit as against the respondents/defendants seeking permanent injunction. Since the respondents did not appear before the Court below, an ex parte decree was passed. On coming to know of the same, the respondents herein filed a petition in I.A.No.1000 of 2012 to condone the delay of 1299 days in filing the petition to set aside the ex parte decree. The said petition was allowed by the court below on terms. Being aggrieved by the same, the plaintiff has filed the above revision.

3. Heard both sides.

4. It is seen that the respondents/defendants in the affidavit filed in support of the petition to get the delay of 1299 days condoned in setting aside the ex parte decree, had stated that since two of the defendants family members have suddenly fallen ill, they could not follow up with their counsel regarding the stage of the case and therefore, the ex parte decree had come to be passed. It is further stated that immediately on coming to know of the same, they have filed the above application to set aside the ex parte decree. Though the revision petitioner/plaintiff resisted the said application by contending that no proper reason was stated for the delay, the court below by considering the various judgments passed by this Court had

exercised its discretion and condoned the delay and that too, on terms, by directing the respondents/defendants to pay a sum of Rs.3,000/- to the revision petitioner/plaintiff.

5. At this juncture, I would like to recollect the judgment of the Hon'ble Supreme Court reported in **2013(12) SCC 649 [Esha Bhattacharjee vs. Raghunathpur Nafar Academy]**, wherein certain principles are laid down for condoning the delay.

"(i) There should be a liberal, pragmatic, justice-oriented, non pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(iv) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(v) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the

paradigm of judicial discretion which is founded on objective reasoning and not on individual perception."

6. Following the aforesaid principles laid down by the Hon'ble Apex Court and considering the facts and circumstances of the case, I do not find any reason to interfere with the order passed by the court below. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2017

vj2

Index: Yes/No
Internet: yes
To

The District Munsif, Tirutanni

PUSHPA SATHYANARAYANA.J

vj2

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