

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

Civil Revision Petition (NPD) No.1156 of 2013
and M.P.No.1 of 2013

S.Valarmathi

...Petitioner

Vs.

S.Kasthuri

...Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decree made in I.A. No.366 of 2012 in O.S. No. 328 of 2003 on the file of the Additional District Munsif, Kancheepuram dated 30.10.2012.

For petitioner : Mr.S.Prabhu

For Respondent : Mr.A.Shanmugam

O R D E R

The petitioner challenges the order dated 30 October 2012 in I.A.No.366 of 2012 dismissing the application filed to condone the delay of 234 days in filing petition to set aside the ex parte decree.

2. Heard the learned counsel for the petitioner. None appears on behalf of the respondent.

3. The respondent filed a suit for partition and obtained a decree *ex parte*. Thereafter, the petitioner filed an application to set aside the *ex parte* decree along with a miscellaneous application to condone the delay of 234 days.

4. The interim application was dismissed by the trial Court primarily on the ground that it was not an *ex parte* decree, but a contested one and as such, the petition to set aside the *ex parte* decree is not maintainable. The application before the trial Court was only to condone the delay in filing application to set aside the *ex parte* decree. There is no question of considering the merits of the appeal or maintainability while considering the application to condone the delay. I am therefore, of the view that the trial Court was not correct in dismissing the application.

5. In the result, the order dated 30 October 2012 is set aside. The application in I.A.No.366 of 2012 is restored to file. The learned Additional District Munsif, Kancheepuram is directed to take up the application and dispose of the same on merits and as per law. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

6. However, I make it clear that this order would not be an expression of opinion regarding the maintainability of appeal.

The civil revision petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2017

gms/maya

To

The Additional District Munsif,
Kancheepuram.

K.K.SASIDHARAN, J.

gms/maya

C.R.P.(NPD)No.1156 of 2013

25.04.2017