

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.671 of 2010
& M.P.No.1 of 2010

1.K.Aruna
2.R.Vijaya
3.K.Geetha

.. Petitioners

Vs.

1.K.Nirmala
2.K.Ramya
3.K.Lavanya
4.Sivagami
5.K.Durga
6.K.Sivakumar

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the C.P.C.,
against the fair and decretal order dated 16.12.2009 in I.A.No.1123
of 2009 in O.S.No.115 of 2006 on the file of the Additional District
Court (Fast Tract Court No.1) Salem.

For Petitioners : Ms. R. Meenal
For Respondents : Mr.T.M. Hariharan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 16.12.2009 in I.A.No.1123 of 2009 in O.S.No.115 of 2006 on the file of the Additional District Court (Fast Tract Court No.1) Salem.

2. The petitioners are the defendants 1, 2 and 5 and respondents are the plaintiffs in O.S.No.115 of 2006. The respondents are the legal heirs of one T.K.Kuppusamy. The respondents filed suit for recovery of money. The petitioners did not file written statement and they were set exparte on 09.01.2008 and the ex-parte decree was passed on 28.07.2008. The petitioners have filed an application in I.A.No.1123 of 2009 to condone the delay of 424 days in filing a petition to set aside the ex-parte decree.

3. According to the petitioners, they have entrusted the case to the husband of the first petitioner and he engaged an Advocate on behalf of the petitioners. The respondents filed another suit in O.S. No.102 of 2006 on the file of the Fast Track Court No.II, Salem,

against the husband of the first petitioner. Therefore, the counsel for the petitioners filed a memo to transfer the present suit to Fast Track Court No.II, Salem and to be tried along with O.S.No.102 of 2006. Due to filing of the said memo by the counsel for the petitioners for transfer, the petitioners did not file written statement and they were set ex-parte. The petitioners filed an application in I.A.No.145 of 2008 to set aside the exparte order and the said application was dismissed, against the same, the petitioners filed the Civil Revision Petition. Pending the said Civil Revision Petition, the ex-parte decree was passed. The petitioners did not file any application immediately, waiting for the result of the Civil Revision Petition filed against the order passed against I.A.No.145 of 2008 to set aside the ex-parte Order. Subsequently, they came to know about the exparte decree, when they received notice in the application filed by the respondents for final decree. On enquiry, they found that an Advocate engaged by them was selected as a Judicial Officer. They made enquiry with the Advocate at Madras and they came to know that the Civil Revision Petition was filed with the application to condone the delay and the same was returned. Subsequently, it was not represented. In view of the above reason, they did not file the application for setting aside the ex-parte decree

and delay is occurred.

4. The respondents filed counter affidavit denying all the averments made by the petitioners and submitted that the petitioners were aware of the ex-parte decree passed against them and it is not correct to state that they came to know exparte decree only when they received notice in the final decree proceedings. The petitioners have not given any valid reasons to set aside the ex-parte decree.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that the petitioners have not given any acceptable reason for condonation of delay of 424 days in filing the petition to set aside the ex-parte decree.

6. Against the order of dismissal dated 16.12.2009 made in I.A.No.1123 of 2009, the Civil Revision Petition is filed by the petitioners.

7. Heard both sides and perused the materials on record.

8. From the materials on record, it is seen that the petitioners

sought for condonation of delay on the ground that they did not file written statement, in view of the memo filed by them for transfer of the present suit to the Fast Track Court No.II, Salem and to be tried along with O.S.No.102 of 2006 filed by the respondents against the first petitioner's husband. They instructed their Advocate to file the Civil Revision Petition against the order dismissing I.A.No.145 of 2008 filed to set aside the ex-parte order. They came to know about the ex-parte decree only when they received notice in the final decree proceedings. They have not stated that when they received notice and whether they filed application to set aside the ex-parte decree immediately.

9. The contention of the learned counsel for the respondents is that the petitioners have not even filed written statement along with petition to set aside the ex-parte decree.

10. Considering the materials as a whole, the reasons put forth by the petitioners are not acceptable and valid reasons for condoning the delay. The petitioners entered appearance through counsel, but did not file written statement. They were set exparte and they filed application to set aside the exparte order. On

dismissal of the said application, according to the petitioners, they instructed their Advocate at Madras to file Civil Revision Petition. The petitioners were not diligent enough whether the Civil Revision Petition was filed, efforts were taken to get the same numbered and bring the same for admission. In the affidavit in one place, the petitioners have stated that they did not file any application to set aside the ex-parte decree expecting favourable orders from this Court.

11. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

12. In the present case, it is seen that even according to the petitioners, number of civil and criminal cases were filed against the husband of the first petitioner and other petitioners. They were conducting the case. The very admission of the petitioners is clearly shows that the petitioners were not diligent enough in taking steps

to set aside the ex-parte order as well as the ex-parte decree.

13. For the above reasons, the Civil Revision Petition is liable to be dismissed as devoid of merits.

14. At this juncture, the learned counsel for the petitioners submitted that the petitioners are willing to deposit a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) within two weeks from the date of receipt of a copy of this order to the credit of the suit.

15. Recording the submission of the learned counsel for the petitioners, if any such deposit is made to the credit of the suit within a period of two weeks from the date of receipt of a copy of this order, the Civil Revision Petition is allowed, failing which, the Civil Revision Petition will be dismissed confirming the order passed in I.A.No.1123 of 2009. No costs. Consequently, connected Miscellaneous Petition is closed.

28.07.2017

Index : Yes/No

kj

V.M.VELUMANI, J.

Kj

To

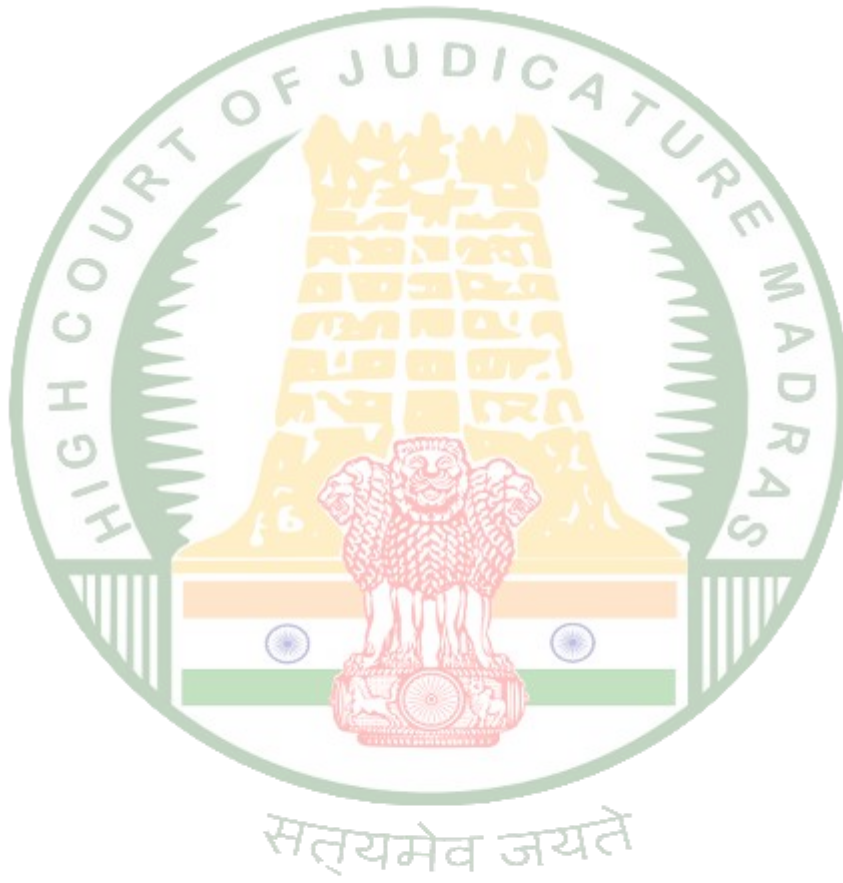
The Additional District Court (Fast Tract Court No.1), Salem.



C.R.P.(NPD)No.671 of 2010
& M.P.No.1 of 2010

WEB COPY

28.07.2017



WEB COPY