



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2017

CORAM:

WEB COPY

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P (MD) No. 2098 of 2014 and
C.M.P. (MD) Nos. 1 of 2014 and 1 of 2015

Rukmaniammal .. Petitioner/Petitioner/2nd Respondent

Vs.

1. T.V. Viswanathan
2. T.V. Sivanath
3. T.V. Saratha .. Respondents/Respondents/Appellants

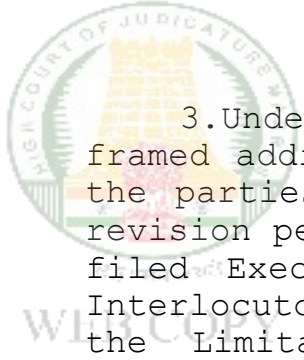
Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to call for the records from the learned Subordinate Court, Madurai Camp Court @ Melur in I.A.No.113 of 2014, in A.S.No.129 of 2009 dated 09.09.2014 and set aside the same.

For Petitioner : Mr.N.Sathish Babu
For Respondents : Mr.M.S.Suresh Kumar

ORDER

The Civil Revision Petition is filed to call for the records from the learned Subordinate Court, Madurai Camp Court @ Melur in I.A.No.113 of 2014, in A.S.No.129 of 2009 dated 09.09.2014 and to set aside the same.

2. The revision petitioner is the second defendant in the suit filed for recovery of possession and for past and future mesne profit. The said suit in O.S.No.403 of 2004 was dismissed on 30.04.2009. Aggrieved by that, the plaintiff preferred the first appeal in A.S.No.129 of 2009 which was also dismissed confirming the order of the Trial Court. Aggrieved by the concurrent judgment, the respondents herein / plaintiff in the main suit have preferred Second Appeal in S.A.No.313 of 2011. Wherein, this court has remanded the case back to the Appellate Court for fresh adjudication after framing additional issues. Till this stage, the revision petitioner herein, has contested the matter. After remand, when notice was served to the revision petitioner, she has refused to receive the notice. Hence she was set *ex-parte*. The reason for refusing the notice, according to the learned counsel for the revision petitioner, is that the name of her husband has been wrongly given.



3. Under the said circumstances, the first Appellate Court had framed additional issues as per directions of this Court and heard the parties and passed order on 12.02.2013. In which, the present revision petitioner was declared *ex-parte*. After, the decree holder filed Execution Petition, the Revision petitioner has filed an Interlocutory Application in I.A.No.113 of 2014 under Section 5 of the Limitation Act to condone 392 days delay in preferring application to set aside the *ex-parte* order passed against her in A.S. No.129 of 2009.

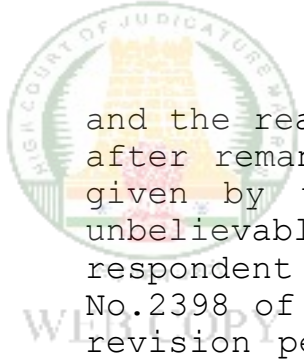
4. The reason for delay as found in the petition is that she was suffering from acute Jaundice and other diseases like Blood Pressure prior to the date i.e., 12.02.2013 and she was taking native treatment for a long time. Due to her old age, she was not able to find a counsel to take up the case till 04.03.2014. Now, having recovered from illness, she has approached a new counsel to set aside the decree passed on 12.02.2013. The Trial Court after considering the reason given by the revision petitioner for the said delay of 392 days and her reason for refusing the notice sent by the Court, has held that first of all, the decree is not an *ex-parte* decree thought the revision petition contents that it was *ex-parte*. The defendant / respondent has contested the appeal, the matter has been heard and decided on merits.

5. Next, the Trial Court has also found that after remand of the appeal back by the High Court, the first Appellate Court has issued notice to the revision petitioner. Though, admittedly, she was aware of the fact that matter has been remanded back to the first Appellate Court for fresh adjudication, wantonly, the revision petitioner has refused to receive the notice of the Court for the reason that her husband's name is wrongly mentioned as Ponnaiyan instead of Panaiyan. The said reason is not an acceptable reason to remain *ex-parte*.

6. The learned counsel for the revision petitioner submitted that a fair chance of contesting the matter in the appeal has to be given to put forth her case. Depriving the opportunity to contest the appeal would highly prejudice the revision petitioner.

7. Per contra, the learned counsel for the respondent submitted that throughout the suit, the revision petitioner was described as Rukmaniammal, wife of 'Ponnaiyan'. In all those proceedings, she has received notice and contested the case, but she refused the notice after remand just to drag on the proceedings. The reason given by her for refusing the notice is also very flimsy and unbelievable. It is further submitted that without any particulars like nature of illness, the date of illness and the place of treatment, a vague reference was given and the Court below has rightly dismissed the application.

8. After considering the submissions made by the respective counsels, this Court finds that the reason for refusing the notice



and the reason for remaining *ex-parte*, without contesting the appeal after remand, is not sufficiently explained. Whatever, explanation given by the revision petitioner, it is found to be vague and unbelievable. It is also pointed out by the learned counsel for the respondent that expecting the revision petition, a Caveat Petition No.2398 of 2014 was filed before this Court mentioning the present revision petitioner as the expected petitioner. The notice issued to the revision petitioner under Section 148 (A) of the Code of Civil Procedure was also refused by her, even when, she was described rightly as Rukmaniammal, wife of '**Panaiyan**'.

9.It is brought to the notice of this Court by the respondent, while moving this Court for revision and ad-interim stay, she had suppressed the fact of caveat petition and has obtained an *ex-parte* order and enjoying the same till date. Hence, an application to vacate stay was filed by the respondent and the same is pending before this Court in C.M.P.(MD)No.1 of 2015.

10.It is pointed out by the learned counsel for the respondent that the Trial Court by the impugned order has rightly observed that the reason stated by the revision petitioner herein to condone the delay are all make-believe statements. It was also pointed out that the remedy available for the revision petitioner was to approach the second Appellate Court, since the first Appellate Court has passed a reasoned order on merits and it is not an *ex-parte* order.

11.Considering the facts and circumstances of the case, this Court finds the revision petitioner has not properly explained the delay of 392 days in filing the petition. Hence, no merit in the revision petition. Accordingly, the revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Madurai Camp Court,
Melur.

+ 1 CC TO Mr.M.S.SURESH KUMAR, ADVOCATE IN SR No. 54335

GNS/MR

TE/GT/SAR-II : 03/07/2017 : 3P/3C

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