



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.2072 of 2017
and
C.M.P (MD) No.10304 2017

1) S.T.Ponnaiah
2) Roselin

... Petitioners/Respondents/
Plaintiffs

vs.

Chenthoor Selvam

... Respondent/Petitioner/
Defendant

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.06.2017 passed in I.A.No.27 of 2017 in O.S.No.79 of 2015 on the file of District Munsif, Sathankulam.

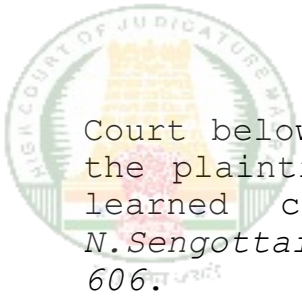
For Petitioner : Mr.M.P.Senthil

ORDER

This revision petition has been filed against the fair and decreetal order dated 20.06.2017 passed in I.A.No.27 of 2017 in O.S.No.79 of 2015 on the file of District Munsif, Sathankulam.

2.Learned counsel for the petitioners would aver that the revision petitioners are plaintiffs and the respondent is defendant in O.S.No.79 of 2015 on the file of District Munsif, Sathankulam. O.S.No.79 of 2015 has been filed for permanent injunction. Since the written statement was not filed by the defendant in time, the Trial Court set the defendant ex parte and passed ex parte decree on 05.04.2016. To set aside the exparte decree, the defendant filed a petition to condone the delay of 85 days in filing the petition to set aside the ex parte decree. The said petition has been allowed on payment of cost of Rs.750/- to the plaintiffs. Aggrieved by the said order, the plaintiffs have filed the instant revision petition.

3.Learned counsel for the petitioners would submit that the respondent has specifically stated that he was residing in Chennai for taking treatment till the applications filed for delay, however, curiously, the respondent himself has received Ex.R1-Copy of Advocate notice dated 24.06.2016 and Ex.R2-Acknowledgment card in Sattankulam itself, as such the allegations for the delay are false and therefore, he has not come forward with the correct reasons for getting the delay condoned, but in the interest of justice, the



Court below allowed the petition on payment of cost of Rs.750/- to the plaintiffs which is arbitrary. In support of his contention, learned counsel relied upon a decision of this Court in *N.Sengottaiyan vs. Shanmughavadivu* reported in 2016 (3) MWN (Civil) 606.

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4.I am not in agreement with the contentions of the learned counsel for the petitioners. Although the revision petitioners marked Exs.R1 and R2 to disprove the contention of the respondent/defendant that he was not well due to sugar and T.B and hence, he could not file written statement, the Court below in order to give one more opportunity to the defendant to contest the case on merits and in the interest of justice, condoned the delay only on payment of cost, which cannot be said to be arbitrary or perverse. It is a well settled legal proposition that merits of the matter should be looked into instead of throwing it on technicalities to render substantial justice. Further, in *N.Sengottaiyan's* case cited by the learned counsel for the petitioner, this Court dealt with a case where there was an inordinate delay of 1600 days in filing the petition to set aside the exparte decree, but in the case on hand, delay is only 89 days. Therefore, in order to render substantial justice, the Court below has rightly condoned the delay on cost, which cannot be said to be perverse or infirm warranting interference by this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif,
Sathankulam.

+One cc to Mr.M.P.Senthil, Advocate, SR.No.87756

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RL/3C/2P/SKN/RSK/SAR1/27/11/2017

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