



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.268 of 2017 (NPD)

WEB COPY

Sivaji Ganesan ... Petitioner /1st petitioner/1st Defendant

Vs

1.Raja ...1st Respondent/Respondent/Plaintiff

2.Sathishkumar @ Sathishkumar

3.Siva

4.Senguttuvan(died)

5.Ilangeeran

6.Pandian

7.Muthukumar

8.Saravanan

9.Bulletravi

10.Paraman @ Paramsivam ... Respondents 2 to 10 / Petitioners 2 to 10 / defendants 2 to 10

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.64 of 2014 in O.S.No.136 of 2010 dated 17.08.2015 on the file of the II Additional District Munsif Court, Trichy.

For Petitioner : Mr.A.V.Rajasekaran

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order passed in I.A.No.64 of 2014 in O.S.No.136 of 2010 dated 17.08.2015 by the II Additional District Munsif Court, Trichy.

2.The petitioner is the first defendant in the suit. The first respondent filed suit in O.S.No.136 of 2010 for direction, directing the petitioner and other defendants to pay compensation of Rs.35,000/-, for causing illegal injuries, mental torture, agony, pain and suffering medical expenses, loss of income, physical suffering and distress to the plaintiff by the defendants act. In the said suit, the petitioner and other defendants did not contest the suit. The petitioner and other defendants were set ex-parte on 16.09.2011 and subsequently an ex-parte decree was passed on 22.12.2011. The petitioner along with respondents 2 to 9 filed I.A.No.64 of 2014 to condone the delay of 694 days in filing the petition to set aside the ex-parte decree. According to the petitioner, he was conducting the case on behalf of the petitioner and respondents 2 to 9. The petitioner was suffering from Jaundice for two weeks and could not contact his advocate to give instructions. Subsequently, he contested in the election and elected as Panchayat President and due to pressure of work, he could not



contact his advocate to conduct the case.

3.The first respondent filed counter affidavit and opposed the said application. The petitioner and respondents 2 to 9 did not let in any oral and documentary evidence. The first respondent marked three documents as Ex.R1 to R3.

4.The learned Judge considering the documents filed by the respondent, dismissed the application filed by the petitioner and respondents 2 to 9 holding that as per the orders of this Court, the petitioner has appeared before the II Additional District Court, Trichy, on the first working day of every English Calendar month and the petitioner and respondents 2 to 9 have not given valid and sufficient reason for condoning the delay in filing the petition to set aside the ex-parte decree.

5.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the suit is for damages and issue could be decided only after giving an opportunity to the petitioner to put forth their case. The reason given by the learned Judge for dismissing the application are not valid reason.

7.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

8.The first respondent by filing documents disproved the reason given by the petitioner for the delay in filing the application to set aside the ex-parte decree. The contention of the first respondent seeking dismissal of the application are not disputed by the petitioner. It is well settled that length of delay is not criteria but the reason must be sufficient and tenable. The intention of the party should not be malafide. In the present case, petitioner and other defendants/respondents 2 to 9 have not given any valid, sufficient reason to condone the delay. In the circumstances, the learned Judge has given cogent and valid reason for dismissing the application and there is no illegality or irregularity warranting interference by this Court.

9.In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Munsif,
Tiruchirappalli.

Am

MAS/RSK-SKN:07.03.2017:3P/2C