



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

C.R.P. (MD) .No.783 of 2017

and

C.M.P. (MD) No.3572 of 2017

Durairaj V.Amirthalingam ... Petitioner/Respondent/Plaintiff

Vs.

1.D.Chandrasekaran.

2.Spadix Matriculation Higher Secondary School, Thanjavur,
Rep. by its Correspondent,
D.Chandrasekaran,
No.169/11, Thirumalai Nagar,
Medical College Road,
Thanjavur - 613 004.

... Respondents/Petitioners/Defendants

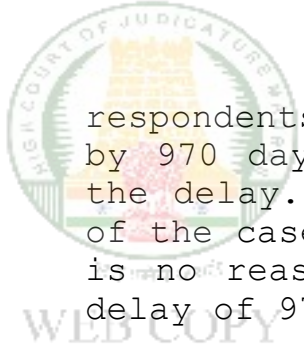
PRAYER: Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decretal order dated 09.01.2017 made in I.A.No.582 of 2016 in O.S.No.17 of 2012 on the file of the II Additional District & Sessions Judge, Thanjavur.

For Petitioner : Ms.U.Nirmalarani

ORDER

The revision petitioner aggrieved by the order passed by the trial Court allowing Section 5 of the application, condoning the delay of 970 days in filing an application under Order 9 Rule 13 to set aside the exparte decree dated 02.09.2013, has preferred the present revision petition on the ground that three suits, which are of the years 2010 and 2012, were clubbed together for joint trial, wherein, the revision petitioners are the plaintiffs in all the three suits.

2.The defendants, allowed the suits to go exparte in turns and thereafter with substantial delay filed applications under Order 9 Rule 13 to set aside the exparte decree and conveniently keeping the suit un-decided for nearly five to seven years. And in this case also, earlier suit was decreed exparte and application to set aside the exparte decree was allowed. <https://hcservices.in/hcservices> the very next hearing, again the suit was decreed exparte on non-representation of the defendants. After filing application to set aside the exparte decree with defects, the



respondents did not represent it in time but delayed the process by 970 days and thereafter sought leave of the Court to condone the delay. The trial Court though properly appreciated the facts of the case, erroneously allowed the application even though there is no reason on the part of the respondents in causing enormous delay of 970 days.

3. The learned counsel for the revision petitioner, referring to the discussion of the trial Court in the impugned order, pointed out that even while filing the condone delay application, the petition did not contain the signature of the petitioner in the affidavit, neither the advocate affixed the signature in the affidavit and the normal procedure of issuance of notice to the other side was not done. This *per se* expose the *malafide* intention of the respondents to keep the matter pending as long as possible by filing the papers with all crucial defects.

4. This Court finds force in the submission made by the revision petitioner. An application to condone delay filed in a cavalier manner without any sufficient cause, placing a vague reference to the advocate's clerk's mistake but without an affidavit of the party concerned has been allowed. As submitted by the learned counsel for the revision petitioner, other two connected matters are pending for trial and therefore for the default of the advocate's clerk, if the delay in filing Order 9 Rule 13 application is not condoned, the Court cannot arrive at a complete conclusion of the lis involved in all the three suits.

5. Therefore, without interfering the order passed by the trial Court in condoning the delay, this Court is of the opinion that it is suffice to direct the trial Court to take up the matter and dispose of this suit in O.S.No.17 of 2012 and other two suits in O.S.No.171 of 2010 and O.S.No.174 of 2010 without further undue consideration to the defaulting party.

6. Since, the matter is more than five years old, the trial Court is instructed to dispose of the matter on priority basis as directed by the Hon'ble Supreme Court.

7. Accordingly, the revision petition is disposed of with the above direction. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar



To

The II Additional District & Sessions Judge,
Thanjavur.

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+1 cc to Ms.U.Nirmalarani , Advocate in SR.No. 52459

SM/MR

AE/JC/08.05.2017/3P/3C

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