

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

CRP. No.2008 of 2013
and
M.P.No.1 of 2013

1.Raju
2.Kamalakannan
3.Dhanapal

... Petitioners

Versus

1.Nallammal
2.Thangavel
3.Devaraju

... Respondents

Common Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code praying to set aside the fair and decretal order of the Additional District Munsif Court at Tiruchengode dated 07.02.2013 in I.A.No.974 of 2011 in O.S.No.246 of 2003.

For Petitioners : Ms.B.Shivani for

Mr.P.Valliappan

For Respondents : Mr.M.S.Palani Swamy

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 07.02.2013 passed by the Additional District Munsif

2. The brief facts leading to the filing of the instant Civil Revision Petition are as follows:-

The respondents filed a suit for bare injunction against the petitioners in O.S.No.246 of 2003 before the Additional District Munsif Court at Tiruchengode. The petitioners who are the defendants in the suit was set exparte and subsequently an exparte decree dated 30.04.2008 came to be passed against the petitioners. Thereafter I.A.No.974 of 2011 in O.S.No.246 of 2011 was filed by the petitioners seeking to condone the delay of 1243 days in filing the application to set aside the exparte decree dated 30.04.2008. The respondents also filed their counter in I.A.No.974 of 2011 denying the averments contained in the affidavit filed in support of I.A.No.974 of 2011 and also stated that sufficient reasons were not given by the petitioners to condone the enormous delay. The trial Court by its order 07.02.2013 in I.A.No.974 of 2011 in O.S.No.246 of 2011 dismissed the said condone delay application. Aggrieved by the dismissal of the condone delay application in I.A.No.974 of 2011, the instant revision has been filed by the petitioners/defendants.

petitioner and Mr.M.S.Palani Swamy learned counsel appearing for the respondent.

4. The suit O.S.No. 246 of 2003 was filed by the respondents against the petitioners for a permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the suit schedule property. The petitioners admittedly received the suit summons in O.S.No.246 of 2003, and entered appearance through counsel but failed to file their written statement on time. Since the written statement was not filed, the trial Court set the petitioners exparte and thereafter exparte decree dated 30.04.2008 was passed against the petitioners. I.A.No.974 of 2011 in O.S.No.246 of 2003 was filed by the petitioners to condone the delay of 1243 days in filing the application to set aside the exparte decree dated 30.04.2008. It is the case of the petitioners as seen from the affidavit filed in support of I.A.No.974 of 2011 that the petitioners contacted their counsel in the year 2008 and he informed them he will be communicating the status of the case to them in time. Further in the affidavit they have stated that they came to know about the exparte decree only on 20.10.2011 when they engaged a new counsel for defending the suit. Since they came to know about the passing of

the exparte decree only on 20.10.2011, the delay in filing the application to condone the delay is neither willful nor wanton.

5. The respondents have also filed a counter to the condone delay application before the trial Court. In the counter they have denied the averments made by the petitioner in I.A.No.974 of 2011 and have stated that the petitioners have not given sufficient reasons for condonation of delay.

6. The trial Court by the impugned order has considered the affidavit and counter affidavit filed in I.A.No.974 of 2011 and has given its findings and that sufficient reasons have not given by the petitioners for condonation of the enormous delay of 1243 days in filing an application to set aside the exparte decree. In the case on hand, the exparte decree came to be passed on 30.04.2008. It is an admitted case of the petitioners that they have contacted their counsel in the year 2008 to know the status of the suit and were informed by the counsel that the communication regarding the status of the case would be sent to them. Even though the petitioners had contacted their counsel in the year 2008, they have not contacted their counsel even after the non-receipt of any communication from

him regarding the status of the case. According to the petitioners only on 20.10.2011 after they had engaged a new counsel they came to know that an ex parte decree was passed against them. In the affidavit filed in support of I.A.No.974 of 2011, the petitioners have not given any explanation as to what transpired between themselves when they had attempted to contact their counsel and 20.10.2011 when they came to know about the passing of the ex parte decree. They have not stated in their affidavit as to whether any communication was received from their erstwhile counsel as promised by him in the year 2008. They have also not given any explanation in their affidavit as to what steps they have taken after 2008 for defending the suit. Admittedly, the petitioners were set ex parte even prior to passing of the ex parte decree by the trial Court. They have also not filed their written statement on time before the trial Court and only due to the said reason they have been set ex parte by the trial Court. Considering the enormous delay of 1243 days in filing the application to condone the delay in setting aside the ex parte decree, this Court cannot show any leniency to the petitioners.

cases that the petitioners seeking to condone such enormous delay will have to satisfy the Court with sufficient reasons and supporting documents. In the instant case, excepting for filing vakalat, counsel notice and acknowledgment card, which are all in the year 2011, the petitioners have not filed any documentary evidence in support of their contention they they came to know about the exparte decree only on 20.10.2011. This Court has examined the impugned order and concurs with the finding given by the trial Court for dismissal of I.A.No.974 of 2011 in O.S.No.246 of 2003 filed by the petitioners.

8. In the result, there is no merit in the instant civil revision petition, accordingly this civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

सत्यमेव जयते

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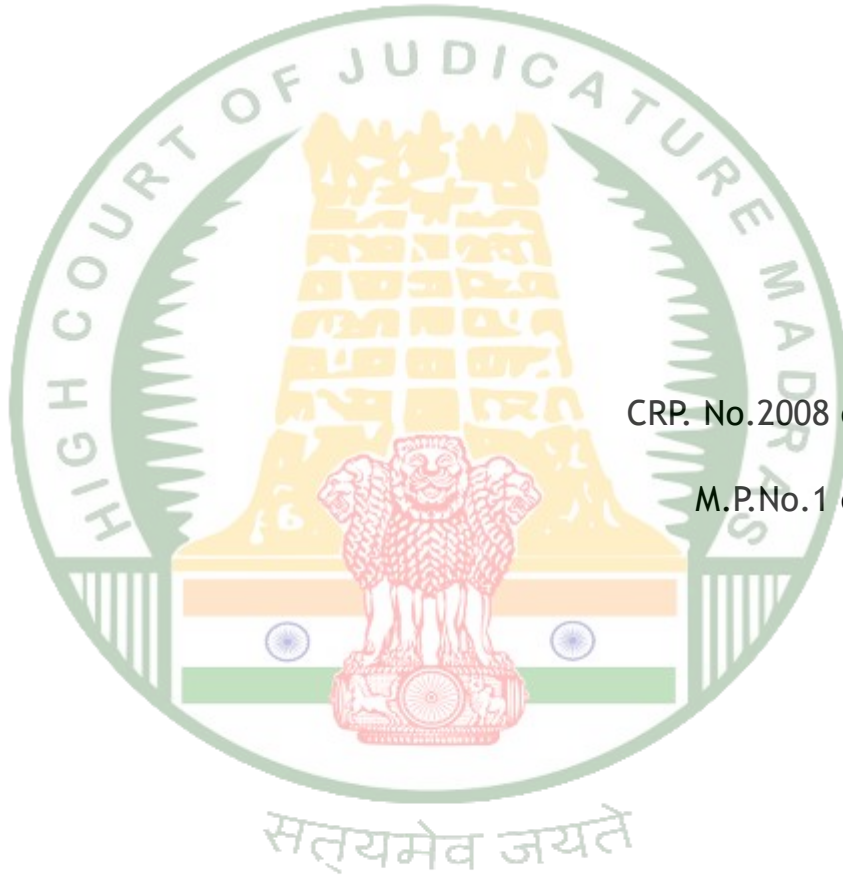
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Index : Yes / No
Internet : Yes / No
Speaking order/Non speaking order

To
The Additional District Munsif Court,
Tiruchengode.



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ABDUL QUDDHOSE.J.
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