

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.R.P.(NPD) No.1782 of 2018
and
C.M.P.No.9970 of 2018

1.M/s.Mother India Dyeing by
Partner,
K.Bhoopathi

2.K.Bhoopathi
S/o.Kaliappa Gounder

K.Sellammal (Died)

3.V.Duvaragamayee Ammal
W/o.Boopathi

4.Krishnaveni
D/o.Kaliappa Gounder

5.Palanivel
S/o.Kaliappa Gounder

6.Prema
D/o.Kaliappa Gounder

7.Parameswari
D/o.Kaliappa Gounder

8.Kumaravel
S/o.Kaliappa Gounder

Sundaravel (Died)
S/o.Kaliappa Gounder

9.Viji
D/o.Kaliappa Gounder

Sakthivel (Died)
S/o.Kaliappa Gounder

10.Amsaveni
W/o.Late Sundaravel

11.Minor S.Madhubala
D/o.Late Sundaravel

12.Minor S.Divya
D/o.Late Sundaravel

13.Radha
W/o.Sakthivel

14.Minor Raja
S/o.Sakthivel

15.Minor Pavithra
D/o.Sakthivel

16.Minor Sumithra
D/o.Sakthivel

...Petitioners

-Vs-

M/s.Jayakumar Colour Company
by Prop.M.Venkatachalam,
S/o.Mariappan,
No.217, Trichy Main Road,
Dadagapatty,
Salem - 6.

...Respondent

Civil Revision Petition filed u/s.115 of the Civil Procedure Code against the fair and decreetal order dated 08.11.2017 passed in I.A.No.317 of 2016 in O.S.No.572 of 1997 on the file of I Additional Sub-ordinate Judge, Salem.

For Petitioners : Mr.R.Ezhilarasan

ORDER

The respondent/deGREE holder filed O.S.No.572 of 1997 on the file of learned I Additional Subordinate Judge, Salem, for recovery of a sum of Rs.4,92,916.65/- along with interest at the rate of 24% p.a. from the date of the suit to till the date of realization. When the Suit came up for hearing, the respondent/deGREE holder was absent and an *ex parte* decree came to be passed on 13.08.2001. Thereafter, the revision petitioners/judgment debtors filed I.A.No.370 of 2016 in O.S.No.572 of 1997 for condonation of delay of 4831 days in filing the petition to set aside the *ex parte* decree and in the affidavit filed in support of the application, it is averred as follows:

'2. The above suit was filed by the Respondent for recovery of money on accounts. The above suit was posted to 13-08-2001 for trial. On that day I was suffering from severe heart problems and could not attend this Hon'ble Court. Since I am looking after the case the other Defendants have not attended

this Hon'ble Court. So we were set exparte on that day. On the petition file by the Respondent the suit was transferred to the Hon'ble Subordinate Judge Court, Sankari, for execution of the Decree. The Respondent filed R.E.P.20/2012 for the sale of the properties of the judgment debtors. The 3rd Defendant died on 23-04-2008. The legal heirs of the 3rd Defendants are added as Respondents 5 to 12 in R.E.P.20/2012. The 10th Respondent died on 26-12-2010. The legal heirs of the 10 Respondent are added as Respondents 13 to 15 in R.E.P.20/2012. The 12th Respondent died on 12-02-2016. The Respondents 16 to 19 are the legal heirs of the 12th Respondent. So all are filing this petition to condone the delay in filing the petition to set aside the exparte decree.'

2. It was contended by the revision petitioners that the delay had occurred on account of the aforesaid reason and it was neither willful nor wanton and prayed for condonation of the same. However, the said petition was strongly opposed by the respondent/deGREE holder by submitting that pending suit, the respondent filed I.A.No.842 of 1997 seeking attachment of properties and the petitioners gave an undertaking that there will not be any alienation of properties, but contrary to the stand taken, petitioners have alienated 7.48 cents and thereby, cheated the respondent. It was further submitted that the reasons for condonation of such a huge delay cannot be accepted as no proper and sufficient reason has been adduced.

3. The trial Court, taking into consideration the materials placed before it and following the judgment of the Honourable Supreme Court reported in **2013 (12) SCC 649 [Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others]** found that no sufficient reason has been adduced to condone such a huge delay and therefore, dismissed the same, vide order dated 08.11.2017 and challenging the legality of the same, the present revision has been filed.

4. Mr.R.Ezhilarasan, learned counsel appearing for the petitioners, has drawn the attention of this Court to the typed set of documents and would submit that the revision petitioners are having a bright chance of success in the event of Suit being decided on merits and one more opportunity may be granted to them to contest the same and would further add that since proper and sufficient reasons have been put forth for condonation of delay in filing the petition to set aside the *ex parte* decree, the impugned order may be set aside and the Civil Revision Petition may be allowed.

5. This Court has considered the rival submissions and perused the materials on record.

6. In the Suit, written statement was filed by the fourth defendant and it was adopted by defendants 1 to 3 and further, when it was taken up for trial, all the defendants remained *ex parte* and therefore, an *ex parte* decree came to be passed on 13.08.2001. The petitioners, having waited for nearly 16 years, had filed I.A.No.370 of 2016 seeking condonation of delay of 4831 days in filing the petition and except stating that on the date when the suit was posted for hearing, the second defendant suffered heart problem and could not attend the Court and since he was looking after the case, other defendants also could not appear. However, to substantiate such averment, he has not produced any material. That apart, nearly after 16 years of passing the *ex parte* decree, the application has been filed to condone such a huge delay.

7. Though it is not obligatory to the petitioners to explain each and every day delay, the delay is very much on the higher side and the respondent/decreed holder, who obtained the *ex parte* decree as early as on 13.08.2001, is yet to realise the fruits of the decree. The revision petitioners have miserably failed to adduce any tenable, proper and acceptable reason to condone such a huge delay.

8. This Court, on an independent application of mind to the entire issue, finds that there is no error apparent or infirmity in the reasons assigned by the trial Court in dismissing the petition and finds no merit in the revision petition.

The Civil Revision Petition is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2018

Index:Yes/No

Internet:Yes

gm

To

The I Additional Sub-ordinate Judge,
Salem.

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M.SATHYANARAYANAN, J

gm



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