



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.229 of 2018

1.M.Periyannan

2.P.Thangaraj

: Petitioners/Petitioners/Defendants

vs.

S.Devendran

: Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order passed in I.A.No.57 of 2017 in O.S.No.81 of 2014 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal dated 23.11.2017.

For Petitioners : Mr.C.Vakeeswaran

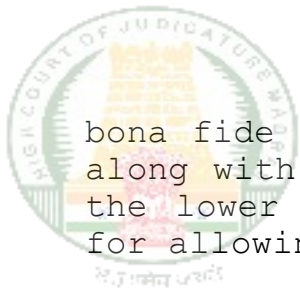
For Respondent : Mr.I.Sam Jegan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed by the learned District Munsif cum Judicial Magistrate, Kodaikanal in I.A.No.57 of 2017 in O.S.No.81 of 2014 dated 23.11.2017.

2. The facts of the case are that the suit in O.S.No.81 of 2014 was filed by the respondent herein/plaintiff against the petitioners herein/defendants for the relief of permanent injunction. As the petitioners/defendants failed to file the written statement on time, the suit was set *ex-parte* on 21.01.2016. After a delay of 293 days, the petitioners have filed a petition in I.A.No.57 of 2017 to condone the delay, so as to file a petition to set aside the *ex-parte*. After hearing both the sides, the Court below has dismissed the petition, against which, the present Civil Revision Petition is filed.

3. The learned Counsel for the petitioners/defendants would submit that the first petitioner was suffering from Jaundice at the relevant point of time and as he was taking country treatment, the petitioners/defendants were not able to file the written statement in time. When they came to know about the *ex-parte* order, there was a delay of 293 days. He would further submit that in order to prove the



bona fide of the petitioners, they have filed the written statement along with the interlocutory application in I.A.No.57 of 2017, but, the lower Court has erroneously dismissed their plea and he prays for allowing the present Civil Revision Petition.

4. On the other hand, the learned Counsel for the respondent would strongly refute the contentions of the learned Counsel for the petitioners and he would submit that though enough opportunities were given to the petitioners, they neither appeared before the Court below nor filed their written submissions. Even in their petition to condone the delay, no genuine explanation is stated, which was rightly dismissed by the Court below and therefore, he seeks dismissal of the present Civil Revision Petition.

5. Heard the learned Counsel on both sides and perused the documents placed on record.

6. Considering the facts and circumstances of the case and also the nature of the suit, I am of the considered view that though the petitioners have not given any convincing reasons for each and every day's delay, ends of justice will be met if an opportunity is given to the petitioners to put forth their case. Therefore, I am inclined to allow this petition on terms.

7. In result, the Civil Revision Petition is allowed and the impugned order dated 23.11.2017 is set aside, on condition that the petitioners/defendants shall pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the respondent/plaintiff within a period of one week from the date of receipt of a copy of this order. Needless to state that in the event of petitioners failing to effect payment as directed by this Court, the Civil Revision Petition shall stand dismissed automatically. No costs.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Kodaikanal.

+ 1 CC TO Mr.C.VAKEESWARAN, ADVOCATE IN SR No. 49272

+ 1 CC TO Mr.I.SAM JEGAN, ADVOCATE IN SR No. 49417

GK

TE/SKN-RSK/SAR-1 : 27/02/2018 : 2P/4C