



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.02.2018
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.R.P. (PD) (MD) No.375 of 2018
and
C.M.P. (MD) No.1675 of 2018

S.M.Muthupandian (died)

1.M.Valarmathi

2.Minor M.Yazhini

3.Minor M.Kaaviya

4.M.Vellaiyammal ... Petitioners / Respondents / Plaintiffs
(3rd and 4th Minor Petitioners are represented through
their Mother and Guardian 2nd Respondent)

vs.

S.Aaleesh ... Respondent / Petitioner / Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, praying to set aside Fair and Decretal order dated 22.12.2016 passed in I.A.No.374 of 2012 in O.S.No.50 of 2010 on the file of the Additional Sub Court, Dindigul.

For Petitioners : Mr.R.J.Karthick

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 22.12.2016 passed in I.A.No.374 of 2012 in O.S.No.50 of 2010 on the file of the Additional Sub Court, Dindigul.

2. The facts of the case are that the petitioners herein, as plaintiffs, have filed a suit in O.S.No.50 of 2010, against the respondent herein/defendant for specific performance and for other reliefs. During the course of the proceedings, as the respondent/defendant remained absent, an ex-parte decree was passed on 03.02.2011. After a delay of 640 days, the respondent has filed a petition in I.A.No.374 of 2012 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 allowed the petition, against which, the present Civil Revision Petition is filed.

3. The learned Counsel for the petitioners would submit that the respondent / defendant deliberately failed to appear before the Court and an ex-parte decree was allowed to be passed on 03.02.2011. Pursuant to the same, the first petitioner has filed E.P.No.49 of 2012 in O.S.No.50 of 2010 on the file of the Additional Sub-Court, Dindigul. Pending E.P., the respondent / defendant has filed an



application in I.A.No.374 of 2012 to condone the delay of 640 days in filing the application to set aside the ex-parte decree. The learned Counsel for the petitioners would further submit that the Court below, without considering the contentions of the petitioners, has allowed the said application and therefore, he prays for interference.

4. Heard the learned Counsel appearing for the petitioner and perused the documents placed on record. Notice to the respondent is dispensed with.

5.A perusal of records would show that the respondent averred that she has been residing in Kodaikanal for 15 years. Notice has not been served on her and it was returned as 'Door locked' and only through substituted service, she has been set ex-parte. Only through her tenant, she came to know about the suit and therefore, the learned Judge, taking note that there is a possibility for the tenant to inform about the case, proceed to order cost and allowed the application, which does not warrant any interference.

6. In result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Additional Subordinate Court,
Dindigul.

+One cc to Mr.R.J.Karthick, Advocate, SR.No.51384

cmr

RL/3C/2P/KK/SAR1/4/4/2018

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