



]BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.08.2018
CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (NPD) [MD].No.276 of 2015
and
M.P (MD) No.1 of 2015

1.Barkath Ali
2.Arajohn

: Petitioners/Petitioners/Defendants 2&3

Vs.

1.Ganesan : 1st Respondent/1st Respondent/Plaintiff

2.T.V.Nagarajan : 2nd Respondent/2nd Respondent/Defendant No.1

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside fair and decreetal order in I.A.No.333 of 2012 in O.S.No.255 of 2012 on the file of District Munsif Kulithalai and by condoning the delay of 150 days in filing the petition to set aside the ex-parte order.

For Petitioners : No Appearance
For R-1 : Ms. J.Maria Roseline
For R-2 : No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the order in I.A.No.333 of 2012 in O.S.No.255 of 2008 on the file of the learned District Munsif, Kulithalai.

2.The present petition was posted for arguments, finally on 14.08.2018, 16.08.2018 and on 20.08.2018 as the learned counsel for the petitioners is not ready for arguments, even today, on 27.08.2018, there is no representation on the side of the petitioners.

3.The revision petitioners are defendants Nos.2 and 3 in I.A.No.333 of 2012. The first respondent is the plaintiff in O.S.No.255 of 2008. The first respondent herein has filed a case against the second respondent and the petitioners herein. The petitioners are set ex-parte in the case and a decree was passed. Against that order the petition in I.A.No.333 of 2012 was filed, to condone the delay of 150 days in preferring the application to set aside the ex-parte decree.



4. On the side of the respondents, it is stated that the judgment of the lower court is on merits and not an ex-parte decree. Moreover, the defendants Nos.2 and 3, who are the revision petitioners herein have cross examined P.W.1 and only latter, they remain ex-parte. The second respondent, who is the first defendant in the original suit has examined D.W.1. Only a contested judgment is passed. The revision petitioners have filed an petition to set aside the ex-parte order, after the pronouncement of a judgment.

5. Records perused.

6. This petition is against the order of dismissal of a delay execution petition. The verification of the records reveals that the petitioners already appeared in the lower court and filed a written statement on 16.04.2009 and they cross-examined P.W.1 and the petitioners were set ex-parte only on 14.06.2011. D.W.1 was examined on the side of the first defendant. The decree is not an ex-parte one, the second respondent, who is the first defendant in the original suit contested the case and only a contested decree was passed by the lower court.

7. With regard to the reason for that delay, the petitioners have stated that the petitioners forgot to get the number of the advocate and to give their number to the advocate. This reason is unbelievable. The second reason stated in the petition is that the petitioner suffered from jaundice and was not able to contact his counsel. No medical reports or documents is filed either before the lower court or before this Court to prove that the petitioner was having jaundice during that relevant period. The reasons stated in the petition are not satisfactory.

8. In the above circumstances, there is nothing to interfere in the order of the lower court. Hence, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The District Munsif, Kulithalai.

+1CC to Ms. J.Maria Roseline, Advocate, SR.No.80477

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