



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(MD)No.1693 of 2017 (PD)

and

C.M.P.(MD).No.9286 of 2017

1.Alagan @ Alagu

2.Mayan @ Alagu

3.Muthalagu

4.Raman

.. Petitioners /
Petitioners / Defendants

Vs.

1.A.Kathiresan

2.T.Ponnuchamy

.. Respondents /
Respondents / Plaintiffs

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 01.07.2017, made in I.A.No.556 of 2016 in O.S.No.1056 of 2011 on the file of the learned II-Additional Sub Court, Madurai.

For Petitioners : Mr.A.Saravanan

For respondents : Mr.B.Kasirajan

ORDER

This civil revision petition has been filed by the revision petitioners / defendants, challenging the order, dated 01.07.2017, passed in I.A.No.556 of 2016 in O.S.No.1056 of 2011, by the learned II-Additional Sub Judge, Madurai, whereby and whereunder the relief of the revision petitioners / defendants ie., to condone the delay of 678 days in filing an application for setting aside the ex parte decree, dated 10.04.2012, was dismissed.

<https://hcservices.courts.gov.in/hcservices/> stated in the petition that the respondents / plaintiffs have filed the suit in O.S.No.1056 of 2011 for specific



performance. Though the revision petitioners / defendants entered appearance through a counsel, since there was no representation for the revision petitioners / defendants, the suit was decreed in ex parte. After the ex parte decree, the respondents / plaintiffs had filed an execution petition and on receipt of the notice for the execution petition, the revision petitioners / defendants approached their earlier counsel, who assured that he will take care of everything and thereafter, there was no communication from the earlier counsel and hence, on suspicion, the revision petitioners / defendants verified in the execution Court through another counsel and then only, they came to know about the ex parte decree passed against them and in order to file a petition to set aside the said ex parte decree, there was a delay of 678 days and therefore, the revision petitioners / defendants filed I.A.No.556 of 2016 in O.S.No.1056 of 2011 and the said petition was dismissed by the trial Court holding that there is no valid reason assigned by the revision petitioners / defendants, against which the present civil revision petition has been filed.

3. The learned counsel appearing for the revision petitioners / defendants would submit that the delay is neither willful not wanton and it was due to fault of the earlier counsel, who assured that he would take care of the matter and after knowing the fate of the suit, the revision petitioners / defendants engaged another counsel and filed the I.A.No.556 of 2016 seeking to condone the delay in filing a petition to set aside the ex parte decree and no prejudice would be caused to the respondents / plaintiffs in setting aside the ex parte decree. He would further submit that even assuming that the delay was due to the fault of the revision petitioners / defendants, one more opportunity may be given to the revision petitioners / defendants in order to contest and prove their case. Thus, he prayed to set aside the impugned order and allow the interlocutory application for condonation the delay.

4. The learned counsel appearing for the respondents / plaintiffs would submit that the revision petitioners / defendants purposefully failed to appear before the Court below and hence, their earlier counsel has reported 'no instructions' and based on the same, the Court below has decreed the suit in ex parte. He would further submit that even after receipt of the notice in the execution proceeding, the revision petitioners did not immediately file any petition for setting aside the ex parte decree, which would go to show that knowing fully well about the ex parte decree, they have filed the said interlocutory application belatedly and the Court below has rightly rejected the relief sought for by the revision petitioners on the ground that there is no valid reason assigned by the revision petitioners / defendants. Thus, he prayed for dismissal of the civil revision petition.



5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. A perusal of the record would go to show that after receipt of notice, the revision petitioners / defendants entered appearance through a counsel and as the said counsel reported 'no instructions' before the Court below and there was no appearance on behalf of the revision petitioners / defendants, the suit was decreed in ex parte. According to the revision petitioners / defendants, the earlier counsel did not inform anything about the ex parte decree passed by the Court below and that after receipt of notice in the execution petition, when they approached the earlier counsel, he assured that he would take care of the matter, but, in the execution Court also, no representation made on the side of the revision petitioners / defendants by the earlier Counsel and hence, they were set ex parte. It is also seen from the record that the revision petitioners / defendants, thereafter, by engaging another counsel, had filed E.A.No.4 of 2015 before the Court below, in order to set aside the ex parte order. But, the same was dismissed on 07.10.2016 and only thereafter, the revision petitioners / defendants have filed I.A.No.556 of 2016 seeking condonation of delay of 678 days.

7. The reason assigned by the revision petitioners / defendants that due to the fault of the earlier counsel, they could not take earliest action, appears to be flimsy reason. It is the duty of the revision petitioners / defendants, who are the main contesting parties, to follow up the case proceeded in the Court below and they cannot shirk their entire responsibility by putting blame on the earlier counsel. However, considering the nature of the dispute, the reason stated by the revision petitioners / defendants and the length of delay, this Court is of the view that the ends of justice would be met if one more opportunity is given to the revision petitioners / defendants by allowing this petition on terms.

8. In view of the above, this civil revision petition is allowed and the order impugned in this petition is set aside and I.A.No.556 of 2016 is allowed subject to the payment of cost of Rs.5,000/- (Rupees five thousand only) to the respondents within a period of three weeks from the date of receipt of copy of this order, failing which this petition will stand automatically dismissed without any further reference to this Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)



To
1.The IInd Additional Subordinate Judge,
Madurai.

+1CC TO M/S.A.SARAVANAN, ADVOCATE, SR NO.46421

C.R.P.(MD)No.1693 of 2017 (PD)
06.02.2018

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