



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.1923 of 2017
and C.M.P. (MD) No.9905 of 2017

Rajammal
Defendant

... Petitioner/Petitioner/1st

-vs-

Ganesan

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records of the learned District Munsif, Sattur made in I.A.No.243 of 2017 in O.S.No.30 of 2016 and set aside the Fair and Decreetal Order dated 21.08.2017.

For Petitioner : Mr.P.Saravanakumar

For Respondent : Mr.K.Paulraj

O R D E R

The revision petitioner is the 1st defendant in the suit in O.S.No.30 of 2016 on the file of the learned District Munsif, Sattur and the suit was filed by the plaintiff, seeking for the relief of recovery of possession among various other relief. During pendency of the suit, the 1st defendant / revision petitioner herein had filed an application in I.A.No.243 of 2017 for condoning the delay in filing an additional counter affidavit to the suit, which was dismissed by the Trial Court on the ground that an attempt is being made to adduce new pleadings to the suit by way of filing additional counter affidavit. Challenging the said order, the petitioner is before this Court.

2. It is the case of the revision petitioner that in the suit, the plaintiff had only impleaded the Executive Officer of the Arulmigu Mariammal Temple, thereby omitting to add the hereditary trustees of the Temple as parties to the suit and the said fact was not brought to the notice of this Court in the earlier counter affidavit filed by her. It is the further case of the revision petitioner that unless the factum of non joinder of necessary parties is considered by the Trial Court, there might not be any possibility of correct quietus to the issue.

3. The revision petitioner states that if this petition is not allowed, much prejudice would be caused to her and the Trial Court decided to proceed further only based on the earlier counter affidavit. Contending that the petitioner ought to be given an



opportunity to defend her case effectively by filing additional counter affidavit, it is prayed that the order of the Trial Court is liable to be set aside.

4. Per contra, learned counsel for the respondent/plaintiff would contend that the entire administration of the Temple is taken care of by the Assistant Commissioner of the Temple and the parties proposed to be mentioned in the counter affidavit were conducting only poojas and other related works of the Temple and they have no connection with the administration of the Temple. The present petition was filed with the mala fide intention to drag on the proceedings and since the trial of the case was posted for cross examination, this petition lacks merits acceptance and is to be dismissed at the threshold.

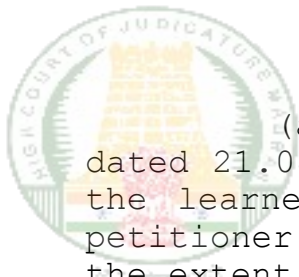
5. Heard the learned counsel on either side and also perused the material documents available on record.

6. It is stated by the petitioner that she had filed an affidavit before the Trial Court, explaining the necessity to file an additional counter affidavit so as to bring it to the notice of the Trial Court regarding omission of certain parties in the suit and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner.

7. It is appropriate to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. The Hon'ble Supreme Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others in Civil Appeal Nos.8183-8184 of 2013 (Arising out of S.L.P. (C) Nos. 24868-24869 of 2011) decided on 13.09.2013, had laid down certain parametres for consideration of condonation of delay and though the number of delay has not been specifically mentioned in the present case, this Court is conscious of one of the parametres laid down by the Hon'ble Supreme Court that "there is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation."

8. If the present case is analyzed on par with the said case and the parametres, this Court could be able to easily conceive that the suit is of the year 2016 and the attempt of the petitioner in bringing to the notice of the Court certain hidden parties by way of additional counter cannot be brushed aside by simply declining to condone the delay. Therefore, upon hearing the submissions of both sides and finding merits in contention raised by the petitioner, this Court is of the view that the order dated 21.08.2017 made in I.A.No.243 of 2017 in O.S.No.30 of 2016 by the learned District Munsif, Sattur, is liable to be set aside.

9. In the result,



(a) this Civil Revision Petition is allowed and the order dated 21.08.2017 made in I.A.No.243 of 2017 in O.S.No.30 of 2016 by the learned District Munsif, Sattur, is hereby set aside and the petitioner is permitted to file an additional counter affidavit to the extent indicated therein;

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(b) the learned District Munsif, Sattur is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order, by conducting the case on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

The District Munsif,
Sattur.

+1CC TO Ms.P.KALAIYARASI BHARATHI, ADVOCATE IN SR.NO.73197.

AR
DS RSK SAR-4 15.10.2018 3P/3C

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