



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (NPD) (MD)No.2623 of 2017
and
C.M.P. (MD)No.12083 of 2017

1.Y.Rajarathinam
2.Rosalin Rajarathinam ... Petitioners / Petitioners /
Defendants
vs.
1.Thangathurai
2.Sumathi Esther Grace ... Respondents / Respondents /
Plaintiffs

PRAYER: Petition filed under Section 115 of the Civil Procedure Code against the order dated 10.11.2016 passed in I.A.No.541 of 2015 in O.S.No.731 of 2011 by the learned Principal District Munsif, Madurai Town.

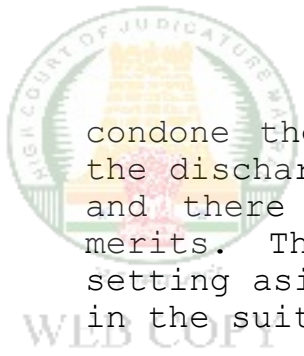
For Petitioners : Mr.T.R.Jeyapalam
For Respondents : Mr.R.Santhanakrishnan

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal District Munsif, Madurai in I.A.No.541 of 2015 in O.S.No.731 of 2011 dated 10.11.2016.

2. The fact of the case is that originally the suit in O.S.No.731 of 2011 was filed by the respondents herein, as plaintiffs, against the petitioners herein, seeking the relief of permanent injunction and other reliefs. During the course of trial, as the petitioners herein/ defendants remained absent, the trial Court has passed an ex-parte decree on 28.03.2014. It is the case of the petitioners/defendants that as the first petitioner was hospitalized, both of them were not aware of the fate of the suit and when they came to know about the ex-parte decree, there was a delay of 502 days in filing a petition to set aside the ex-parte decree. Therefore, they have filed the interlocutory application in I.A.No.541 of 2015, seeking to condone the delay and the trial Court, after hearing both the sides, has dismissed the said interlocutory application. Challenging the same, the present revision petition came to be filed.

3. The learned Counsel for the petitioners would submit that the trial Court, despite the production of Doctor's certificate, has erroneously dismissed their interlocutory application seeking to



condone the delay, stating that the petitioners have not produced the discharge summary. The delay caused in neither wilful nor wanton and there are arguable points for them to contest the suit on merits. Therefore, he seeks to allow the present revision, by setting aside the impugned order, so as to put forth their arguments in the suit.

4. On the other hand, the learned Counsel for the respondents would stoutly refute the contentions of the learned Counsel for the petitioners and he would submit that the petitioners are closely watching the Court proceedings. With an intention to drag on the proceedings, they had allowed the suit to set ex-parte and after a delay of 502 days, they have filed the present condonation delay petition, so as to file a restoration petition.

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

6. It is seen from the records that as the petitioners have not produced the discharge summary, the learned Judge has dismissed their plea to condone the delay, since the delay is inordinate.

7. Considering the facts and circumstances of the present case, this Court is of the view that in the interest of justice, this petition shall be allowed, but on terms.

In result,

1. The impugned order passed by the learned Principal District Munsif, Madurai in I.A.No.541 of 2015 in O.S.No.731 of 2011 dated 10.11.2016 is set aside and consequently, the suit in O.S.No.731 of 2011 is restored to file, on condition that the petitioners shall pay a sum of Rs.2,000/- to the respondents, jointly or severally, within a period of one week from the date of receipt of a copy of this order, failing which, this Civil Revision Petition stands dismissed automatically, without any further reference.
2. In the event of petitioners effecting payment to the other side, as per the order of this Court, the learned Principal District Munsif, Madurai is directed to dispose of the suit in O.S.No.731 of 2011, after hearing all the parties, within a period of six months from the date of receipt of a copy of this order.
3. The petitioners are directed to co-operate with the Court proceedings, without adopting any delay tactics.

8. This Civil Revision Petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To
The Principal District Munsif,
Madurai.

+1CC to Mr.T.R.Jeyapalam, Advocate, SR.No. 44238

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