



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.847 of 2017 (NPD)

and

C.M.P (MD) No.3777 of 2017

S.Ragupathy

... Petitioner/Respondent/ Plaintiff

Vs.

1.A.Pitchai Arasu

2.S.K.V.Chandra

3.M.P.R.Malayandi alias Ashok

... Respondents/Petitioners/
defendants

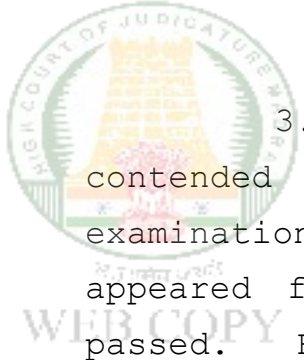
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to aside the fair and decreetal order dated 17.10.2016 made in I.A.No.147 of 2010 in O.S.No.439 of 2004 on the file of the District Munsif, Melur and allow the Civil Revision Petition.

For Petitioner : Mr.P.Thiyagarajan
For Respondent No.1 : Mr.G.Prabhu Rajadurai
For Respondent Nos.2 and 3 : No appearance

O R D E R

This Civil Revision Petition is filed against the order dated 17.10.2016 made in I.A.No.147 of 2010 in O.S.No.439 of 2004 on the file of the District Munsif, Melur.

2. The lower Court has allowed the respondents' application to condone the delay, on condition that the respondents/defendants shall pay a sum of Rs.2,000/- to the petitioner/plaintiff on or before 01.11.2016, with a default clause, i.e., if the respondents fail to effect the payment, the condone delay petition stands dismissed automatically.



3. The learned counsel appearing for the petitioner has contended that the suit was posted on 23.07.2009 for cross examination of plaintiff's witness. But the defendants had not appeared for cross examining P.W.1 and hence exparte order was passed. Even thereafter, the defendants had not approached the Court to set aside the exparte order in time. In order to drag on the proceedings, they have filed the present petition, with a delay of 149 days.

4. It is further stated by the learned Counsel for the petitioner that while filing the petition to set aside the exparte order, in the affidavit, it has been stated by the respondents that the second defendant is in out of station, but in the proof affidavit, it has been stated that he was not well and therefore, the reason for condoning the delay is not a bonafide one and therefore, he prays for allowing the Crp

5. Per contra, the learned counsel appearing for the respondents/defendants has contended that the court below, after analysing the materials available on record, has passed the impugned order allowing their claim. Moreover, the lower Court, taking into consideration the quantum of delay, has allowed the petition with costs, payable to the petitioner, which is perfectly valid in law and there is no need to interfere with the the order of the court below. Hence, he prayed for the dismissal of the civil revision.

6. The Court below by an order dated 24.07.2017 allowed the petition on payment of costs. Aggrieved by the said order, the petitioner herein had preferred the above Civil Revision Petition.

7. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents and perused the materials available on record.

8. It is seen from the records that the suit is filed for permanent injunction and the suit was decreed ex-parte on 23.07.2009.



9. The main grievance of the respondents/defendants is that there are arguable points available to contest the suit and hence, the ex-parte decree passed against them has to be set aside. It is also seen that the reasons stated for the delay in filing is well established before the lower Court and the lower Court, after taking into consideration the huge delay, in the interest of justice and in order to provide a fair opportunity to the defendants to put forth their case, has allowed the petition on terms.

10. In the light of the above facts, this court do not find any perversity or illegality in the order impugned in this revision.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Melur.

+1cc to M/S.P.THIAAGARAJAN, Advocate SR.No.42881.
+1cc to M/S.G.PRABHU RAJADURAI, Advocate SR.No.42937.

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and
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