



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) (MD) No.874 of 2016

Saratha

... Petitioner / defendant

-vs-

1.Murugan
2.Saminathan
3.Parvathi
4.Minor Sarathkumar
5.Kannayan
6.Mariamammal
7.Gnanavalli
8.Sellathurai

... Respondents / plaintiffs

Prayer: Civil Revision Petition is filed under Section 115 CPC to set aside the fair and decreetal order, dated 14.10.2014 passed in I.A.No.123 of 2014 in O.S.No.202 of 2010 on the file of the District Munsif, Pudukkottai.

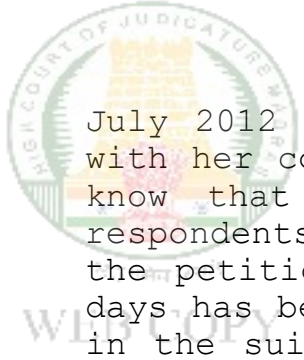
For Petitioner : Mr.B. Jameel Arasu
For Respondents : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order, dated 14.10.2014 passed in I.A.No.123 of 2014 in O.S.No.202 of 2010 on the file of the learned District Munsif, Pudukkottai.

2. The respondents herein, who are the plaintiffs, have filed a suit in O.S.No.202 of 2010, on the file of the learned District Munsif, Pudukkottai, for declaration and permanent injunction and in the said suit, the defendant / revision petitioner herein was set ex parte and ex parte decree was passed on 03.08.2012. In such circumstances, the revision petitioner / defendant has filed an application in I.A.No.123 of 2014, to condone the delay of 517 days in filing an application to set aside the ex parte decree passed in O.S.No.202 of 2010 and the same was dismissed on the ground that no proper reasons have been assigned in approaching the Court. Challenging the said order, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted the petitioner was attacked with Paralytic stroke from



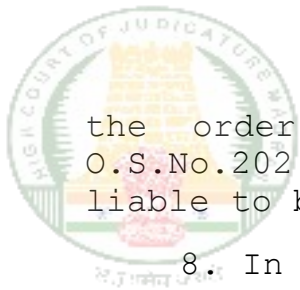
July 2012 onwards and hence, she was not able to move and contact with her counsel. He further submitted that the petitioner came to know that an ex parte order was passed in favour of the respondents / plaintiffs only through the villagers. Thereafter, the petitioner approached her counsel and hence, the delay of 517 days has been occurred for setting aside the ex parte decree passed in the suit in O.S.No.202 of 2010. However, the Appellate Court, without properly appreciating the facts and circumstances, has simply dismissed the application instead of condoning the delay.

4. Learned counsel appearing for the respondents has contended that the petitioner has filed the application only with an intention to drag on the proceedings and the delay in preferring the application for setting aside the ex parte decree has not been properly explained. The Trial Court had carefully examined all the material particulars before rendering its findings and delivered the judgment. The revision petitioner, in support of her contention has not produced any proof therefor and therefore, finding no valid ground or reasons to condone the delay, the Appellate Court has dismissed the application. Hence, there is no error in the order of dismissal passed by the learned Appellate Court and the petition is liable to be dismissed *in limine*.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. This Court also perused the material documents available on record.

6. The main contention of the revision petitioner is that though the revision petitioner was able to contest the suit regularly before the Trial Court, subsequently, due to some inevitable circumstances and missing communication, he did not file an application to set aside the ex parte decree forthwith and he has filed an application in I.A.No.123 of 2014 in O.S.No.202 of 2010, with a delay 517 days. As repeatedly held by this Court and the Hon'ble Supreme Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of **G.Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam, rep. by its Executive Officer, Cuddalore**, reported in **2010 (1) MWN Civil 837**, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party has not received proper communication from his lawyer in respect of his case.

7. In the present case on hand, it has been repeatedly reiterated by the petitioner that pursuant to her serious physical ailment, there was no communication between her and her Advocate and therefore, the delay has occurred in filing an application to set aside the ex parte decree passed in O.S.No.202 of 2010, which is an acceptable ground to consider the case of the petitioner. Accordingly, upon hearing both sides and finding merits in contention raised by the petitioner, this Court is of the view that



the order dated 14.10.2014 passed in I.A.No.123 of 2014 in O.S.No.202 of 2010 by the learned District Munsif, Pudukkottai, is liable to be set aside, but with costs.

8. In the result,

(a) this Civil Revision Petition is allowed and the order dated, 14.10.2014 passed in I.A.No.123 of 2014 in O.S.No.202 of 2010 by the learned District Munsif, Pudukkottai, is hereby set aside and the delay is condoned subject to the condition that the petitioner shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the Hon'ble Chief Justice Relief Fund, Madras High Court, Madurai, within a period of three weeks from the date of receipt of copy of this order;

(b) the learned District Munsif, Pudukkottai, on production of the receipt in proof of payment of costs by the petitioner within the time limit prescribed by this Court, is directed to number the set aside application and pass orders within a period of 15 days and thereafter, passing orders in the set aside application, the Trial Court is directed to dispose the suit within a period of three months. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The District Munsif, Pudukkottai.

2.The Section Officer,
Account Section,
Madurai Bench of Madras High Court,

+1 CC to Mr.B.JAMEEL ARASU, Advocate in SR.No.71760

TRP

RJ/RP/SAR-2/27/07/2018 - 3P/4C

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