



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P.(MD)No.110 of 2013(NPD) and
M.P.(MD)No.1 of 2013

1. M.Namakanda Thevar
2. N.Jeyanayakam
3. M.Periyasamy
4. M.Muthalagu Thevar
5. M.Samidurai

... Petitioners/Defendants/
Petitioners

Vs.

K.Sarasammal

... Respondent/Plaintiff/
Respondent

Prayer: Civil Revision petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in I.A.No.44 of 2012 in O.S.No.55 of 2007 passed by the learned District Munsif, Kamuthi, dated 21.11.2012.

For Petitioners : Mr.S.J.Chakaravarthy,
for M/s.Eddy and Embboss
For Respondent : M/s.P.Selva Kamatchi,
for V.Raghavachari

O R D E R

This Civil Revision petition is filed by the defendants 1 to 5 in the suit in O.S.No.55 of 2007.

2. It appears that the respondent in this Civil Revision petition has filed a suit in O.S.No.6 of 2000 on the file of the Principal District Munsif Court, Kamuthi. Though the suit was originally decreed in merits. The appeal preferred by the respondent was allowed and the suit in O.S.No.6 of 2000 was dismissed with liberty to the plaintiff to file a fresh suit. Thereafter, the suit in O.S.No.55 of 2007 was filed by the respondent and an ex-parte decree was passed on 25.03.2008 as the defendants in the suit did not appear. Defendants 1, 3, 4 and 5 thereafter filed an application in I.A.No.44 of 2012 in O.S.No.55 of 2007 to condone the delay of 1154 days in filing a petition to



set aside the ex-parte decree in the suit in O.S.No.55 of 2007 on the file of the District Munsif-cum-Judicial Magistrate Court, Kamuthi. The petition filed by the Revision petitioners in I.A.No.44 of 2012 was dismissed holding that there is no explanation for the delay of 1154 days and that the reasons stated cannot be accepted. Aggrieved by the same, the Revision petitioners have preferred the above Civil Revision petition.

3. In the affidavit filed in support of the petition to condone the delay of 1154 days, the Revision petitioners have stated as follows:-

"3. நான் இன்று சமூகம் கோர்ட்டில் தாக்கல் செய்துள்ள ஒருதலைபட்ச தீர்ப்பாணையை ரத்து செய்ய மனுவை தாக்கல் செய்வதில் 1154 நாட்கள் காலதாமதம் ஆகி விட்டது. இது தெய்வாதீனமாக ஏற்பட்டதாகும். காலதாமதத்தை மன்னித்து மனுவை பைலுக்கு எடுக்க வேண்டியது தர்மமும், நியாயமுமாகும்."

4. Except the reasons stated in paragraph No.3 of the affidavit, there is no reason assigned by the Revision petitioners, explaining the inordinate delay of 1154 days.

5. Learned counsel for the Revision petitioners relied upon a Judgment of this Court in the case of **V.Kodaraj and another Vs. K.R.Rajeswari in C.R.P. (NPD) (MD) No.503 of 2012(dated 14.07.2015)**, wherein, the Civil Revision petition preferred against the order dismissing the petition to condone the delay of 2272 days in filing the application to set aside the ex-parte decree was considered. This Court after holding that the ex-parte Judgment passed in the suit is contrary to law further held that the petition filed by the Revision petitioner to set aside the ex-parte decree and to condone the delay in filing a petition to set aside the ex-parte decree are liable to be allowed.

6. With great respect to the said Judgment, this Court is of the view that the petition to condone the delay in filing a petition to set aside the ex-parte decree cannot be considered on the basis of any irregularity in the ex-parte Judgment or order that was passed. The defendant can also file an appeal against the ex-parte Judgment and decree alleging any irregularity. If a Court pass an ex-parte judgment, without properly recording the findings to justify the decision, it is liable to be challenged in appeal. In a petition filed to condone the delay in filing the petition to set aside the ex-parte decree, the Court need not go into the merits of the case. In a petition to condone the delay, the only issue the Court may consider is whether the delay has been properly explained and whether the petitioner has proved sufficient cause for the delay in filing the petition to set aside the ex-parte decree. In this case, the only reason stated by the Revision petitioners is that the delay was due to inadvertence. The Court cannot accept inadvertence as a reason to condone the



inordinate and huge delay of 1154 days in filing the petition. Hence, this Court is of the view that the trial Court has dismissed the application on proper appreciation of the facts and circumstances of the case. In cases where the delay has not been explained to the satisfaction of the Court, the Court is not expected to show any indulgence. Only when there is proper and valid explanation for the delay irrespective of the fact that the delay is inordinate, the Court can show some lenience while exercising power of discretion. This Court is convinced that the petitioner has not given any valid explanation for the delay.

7. In such circumstances, there is no merits in the Revision petition and hence, this Civil Revision petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

pmu

To

1. The District Munsif,
Kamuthi.

2. The Record Keeper, V.R.Section, (2 COPIES)
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO M/S.EDDY & EMBBOSS LAW FIRM ,Sr.No. 63386

+1 CC TO Mr.V.RAGHAVACHARI , Advocate, Sr.No. 64068

JAM/01/06/2018/ CM/ SAR 3/ 3P-6C

C.R.P. (MD) No.110 of 2013 (NPD) and
M.P. (MD) No.1 of 2013
25.04.2018