

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.NPD.No.2297 of 2009
and
MP.No.1 of 2009

1.Jamila Bibi
2.Mohammed Rafi
3.S.Ajeez
4.S.Umar Farook
5.Fathima Bibi
6.S.Maria Bibi

...Petitioners

S.Vijayalakshmi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 24.03.2008 in IA.No.2782 of 2007 in OS.No.330 of 2005 on the file of the Principal District Judge, Coimbatore.

For Petitioners : Mrs.P.Srividhya
For Respondent : No appearance

ORDER

The revision petitioners are the defendants in OS.No.330 of 2005 on the file of the Principal District Judge, Coimbatore. The respondent / plaintiff filed the suit for recovery of a sum of Rs.6,20,548/- (Rupees Six Lakhs Twenty Thousand Five Hundred and Forty Eight only) together with interest at the rate of 24% per annum on Rs.3,00,000/- (Rupees Three Lakhs only) from the date of the suit, till the date of realization. The fourth revision petitioner / fourth defendant filed his written statement and the other defendants adopted the written statement filed him. However, since all the defendants did not appear subsequently before the learned Principal District Judge, Coimbatore, the suit was decreed exparte on 04.11.2008.

2. Thereafter, the revision petitioners / defendants filed a petition to set aside the exparte decree passed against them along with a petition under Section 5 of the Limitation Act in IA.No.2782 of 2007 praying to condone the delay of 283 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure to set aside the exparte decree passed against

them. The learned Principal District Judge, Coimbatore vide his fair and decreetal orders dated 24.03.2008, dismissed the said petition on the ground that the revision petitioners / defendants did not show sufficient cause for condoning the delay of 283 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure to set aside the decree passed against them on 04.11.2008. Aggrieved over the orders passed by the learned Principal District Judge, Coimbatore, the present Civil Revision Petition is filed by the defendants under Article 227 of the Constitution of India.

3. Mrs.P.Srividhya, learned counsel appearing for the revision petitioners contended that when the revision petitioners had shown sufficient cause for not appearing before the court on 04.12.2006, the trial Court Judge should have condoned the delay of 283 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure. It is her further contention that the revision petitioners should be given sufficient opportunity to contest the main suit in OS.No.330 of 2005.

4. No appearance on behalf of the respondent.

5. A perusal of the orders passed by the learned Principal District Judge, Coimbatore clearly shows that the revision petitioners / defendants did not produce any documentary evidence to show that the fourth defendant was hospitalized at Ramakrishna Hospital, Coimbatore as alleged by them. In the affidavit filed along with the petition in IA.No.2782 of 2007, the revision petitioners / defendants had contended that since the fourth defendant was hospitalized, other defendants could not appear before the court. It is relevant to point out that there are six defendants in the suit and all of them have engaged a counsel and a written statement was also filed on their behalf. Even assuming that the fourth defendant was hospitalized, the fact that the other defendants did not appear before the learned Principal District Judge, Coimbatore goes to show that the revision petitioners / defendants were not diligent in prosecuting the case filed against them. Furthermore, the revision petitioners have not shown sufficient cause for condoning the delay of 283 days. Therefore, the orders passed by the learned Principal District Judge, Coimbatore does not warrant any interference by this court.

6. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

05.08.2019

mbi

Index : Yes/No

To

The Principal District Court,
Coimbatore.



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R.HEMALATHA, J.

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