

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P.No.776 of 2012
and M.P.No.1 of 2012

1.Kandasamy
2.Rani

... Petitioners

Vs.

Kaliyammal

... Respondent

Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 19.09.2011 made in I.A.No.782 of 2009 in O.S.No.455 of 2008 on the file of the District Munsif Court, Perambalur.

For Petitioners: Mr.S.Vadivel Murugan

For Respondent : No appearance

O R D E R

Though the Court notice as well as the private notice were duly served on the respondent and her name has been printed in the cause list, none appeared for her.

2.Challenging the fair and final order passed in I.A.No.782 of 2009 in O.S.No.455 of 2008 on the file of the District Munsif Court, Perambalur, the defendants have filed the above Civil Revision Petition.

3.The respondent/plaintiff filed the suit in O.S.No.455 of 2008 for permanent injunction.

4.Since the defendants failed to appear before the trial Court, they were set exparte and an exparte decree was passed on 30.03.2009. Thereafter, the defendants filed an application in I.A.No.782 of 2009 to condone the delay of 32 days in filing the application to set aside the exparte decree dated 30.03.2009. In the affidavit filed in support of the petition, the defendants have stated that their counsel had passed away and therefore, they were not informed about the date of hearing. Hence, they could not appear before the trial Court and file their written

statement, which resulted in the exparte decree dated 30.03.2009. The plaintiff filed her counter and contested the application. The trial Court, taking into consideration the case of both parties, rejected the case of the defendants and dismissed the application. Aggrieved over the same, the defendants have filed the above Civil Revision Petition.

5.The main reason given by the defendants was that their counsel had passed away and therefore, they were not informed about the date of hearing, which resulted in the exparte decree dated 30.03.2009. The defendants have filed the application to set aside the exparte decree with a delay of 32 days. Further, the defendants have stated that they came to know about the exparte decree only when the respondent/plaintiff filed her counter in the suit in O.S.No.54 of 2009 filed by the defendants herein on 15.04.2009. The defendants also came to know about the death of their counsel only after 15.04.2009.

6.When the defendants have satisfactorily explained the reasons for the delay in the affidavit filed in support of the petition, the trial Court should have condoned the delay of 32 days in filing the application to set aside the exparte decree. But, erroneously the trial Court dismissed the application without any acceptable reason. In these circumstances, in the interest of justice, I am of the considered view that the delay of 32 days in filing the application to set aside the exparte decree should be condoned. Accordingly, the fair and decreetal order passed in I.A.No.782 of 2009 in O.S.No.455 of 2008 are liable to be set aside and the same are set aside. The application in I.A.No.782 of 2009 is allowed. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

The District Munsif, Perambalur.

+1cc to Mr.S.Vadivel Murugan, Advocate sr.87609

C.R.P.No.776 of 2012
and M.P.No.1 of 2012

vd(co)
nr 19/11/2019



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