

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P.(NPD)NO.411 OF 2015

1. Sekar
2. Dhamodharan
3. Manicka Gounder
4. Ponnammal

...Petitioners

Vs.

Kumar

...Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, against the order dated 11.11.2014 made in I.A.No.549 of 2011 in O.S.No.19 of 2006 on the file of the Principal District Munsif and Judicial Magistrate, Vandavasi.

For Petitioners : Mr.M.Guruprasad

For Respondents : No appearance.

ORDER

The order under challenge in the present civil revision petition is, rejection of the petitioners' application seeking to condone the delay of 1833 days in filing an application to set aside the ex-parte decree. The suit is for Permanent Injunction.

2. The petitioners/ defendants were set exparte on 01.12.2006. The application to condone the delay in filing an application to set aside the ex-parte decree came to be filed on 30.09.2011 and the reason adduced for the delay was that, the petitioner herein was unwell and bed ridden and therefore, he could not file the written statement in time. Disbelieving such a reason to be a sufficient cause, the trial court had rejected the said application.

3. The learned counsel appearing for the petitioner had produced a copy of the suit register of documents alleged to be maintained by the trial court and by placing reliance on the same, submitted that, after the petitioner was set ex-parte by order dated 01.12.2006, they had filed the written statement on

04.12.2006 along with a memo. The learned counsel also submitted that the said written statement was misplaced in the registry and therefore, the petitioners, herein should not be found fault with.

4. I am unable to accept the submissions of the learned counsel appearing for the petitioners. It is seen that, in the affidavit filed along with the application to condone the delay of 1833 days, the petitioners, herein, had not raised such a plea of having filed the written statement on 04.12.2006. Even otherwise, the alleged filing as evidenced in the suit register, does not evidence the application being filed along with the written statement, but, only a memo seems to have been filed. Above all, there is absolutely no explanation with regard to the delay caused after 04.12.2006 till the date of filing the application, except for the submission made before this court that the application was misplaced by the Registry. When such a plea was not taken before the court by substantiating the same through material records, it cannot be said that the trial court had erred in rejecting the petitioners' application.

5. It is a settled law that in a case of this nature, each and every day delay requires to be explained. Unfortunately, the only reason adduced in the affidavit filed in the condone delay application is that the petitioner herein, was unwell and bed ridden, without any supporting documents. Though the counsel before the trial court had raised the ground that they had filed the written statement on 04.12.2006, had failed to give reasons as to the delay from 04.12.2006 till the date of filing of the condone delay application. There was no material available before this court to substantiate that such an application was filed or that the application was lost. Even the suit register does not evidence that it is an application to set aside the order of ex parte, but only shows that a memo alone was filed, which cannot be termed to be an application to set aside the ex-parte decree.

6.As such, the reasons adduced cannot be termed as sufficient cause as defined under Section 5 of the Limitation Act and as such, I do not find any infirmity in the order passed by the trial court. Accordingly, the Civil Revision Petition stands dismissed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

bga/ssb

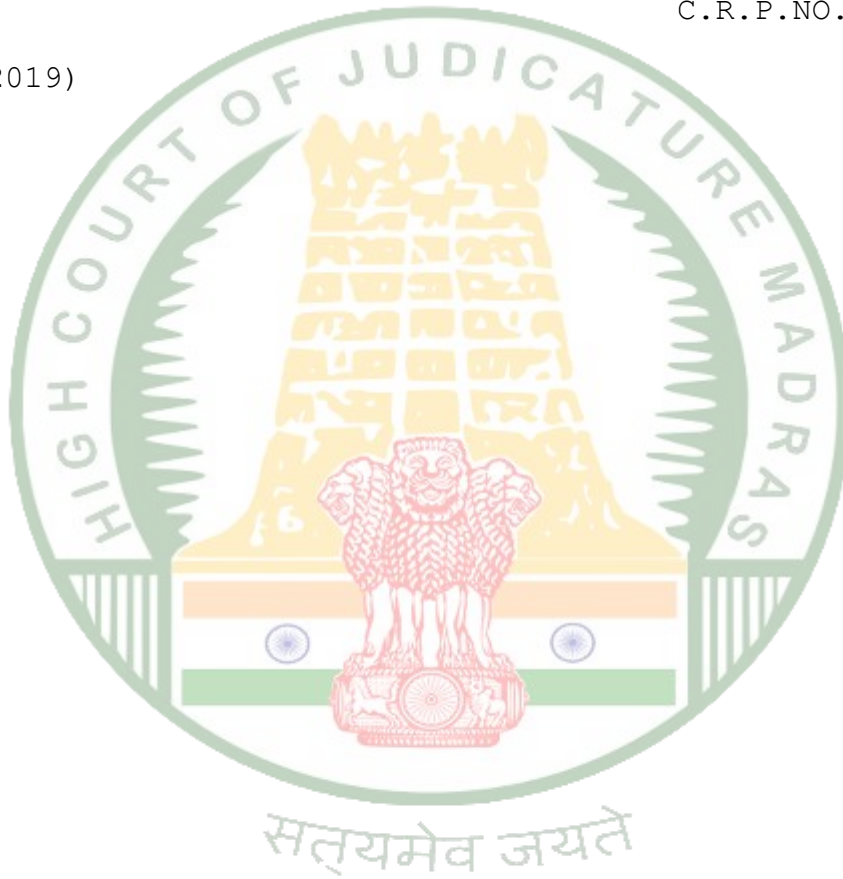
To

1. The Principal District Munsif
and Judicial Magistrate
Vandavasi.

+1 CC to Mr.M.Guruprasad, Advocate sr 2706.

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SSI (CO)
SP (06/02/2019)



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