

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.NPD.No.2841 of 2013  
and  
M.P.No.1 of 2013

1.R.Velmurugan

2.R.Lakshmanan

... Petitioners

vs.

A.Joseph

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 28.06.2013 in IA.No.1857 of 2012 in OS.No.516 of 2009 on the file of the District Munsif Court, Ambattur, Chennai.

For Petitioners : Mr.M.Vivekanandan

For Respondent : No appearance

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ORDER

The revision petitioners are the defendants in OS.No.516 of 2009 on the file of the District Munsif, Ambattur. The respondent / plaintiff filed the said suit for a permanent injunction restraining the revision petitioners / defendants from interfering with his peaceful possession and enjoyment of the suit property.

2. The revision petitioners / defendants were set exparte before the trial court. Subsequently, the revision petitioners / defendants filed a petition under order IX Rule 7 of the Code of Civil Procedure to set aside the exparte order passed against them in IA.No.1401 of 2012 in OS.No.516 of 2009 and the said petition was allowed by the learned District Munsif, Ambattur on payment of costs of Rs.250/- (Rupees Two Hundred and Fifty only) to the respondent / plaintiff. Since the revision petitioners / defendants did not pay the costs, the petition in IA.No.1401 of 2012 was dismissed by the learned District Munsif, Ambattur, against which a Civil Revision Petition was filed before this court in CRP.No.4529 of 2012. During the pendency of the said Civil Revision Petition, the revision petitioners / defendants were set exparte and an exparte decree was passed on 19.10.2012. Therefore, this Court, in CRP.No.4529 of 2012, directed the

revision petitioners / defendants to workout their remedies before the concerned court to set aside the exparte decree passed against them.

3. Accordingly, the revision petitioners / defendants filed a petition under Order IX Rule 13 along with a petition under Section 5 of the Limitation Act in IA.No.1857 of 2012 to condone the delay of 24 days in filing the petition to set aside the exparte decree. The learned District Munsif, Ambattur dismissed the said petition vide his fair and decreetal orders dated 28.06.2013. Aggrieved over the same, the present Civil Revision Petition is filed by the defendants in OS.No.516 of 2009.

4. Mr.M.Vivekanandan, learned counsel appearing for the revision petitioners / defendants contended that the learned District Munsif, Ambattur passed an exparte decree even though CRP.No.4529 of 2012 was pending before this Court and that the reasons assigned by the learned District Munsif, Ambattur for dismissing the petition cannot also be sustained. His specific contention is that the revision petitioners came to know about the exparte decree passed against them only after passing of an order in CRP.No.4529 of 2012.

5 .No appearance on behalf of the respondent.

6. The learned District Munsif, Ambattur while dismissing the petition had opined that since the revision petitioners were aware of the exparte order passed against them even during October 2012, their contention that they came to know about the exparte order only on 08.11.2012 cannot be accepted. In fact, the revision petitioners / defendants filed CRP.No.4529 of 2012 before this Court challenging the orders passed in IA.No.1401 of 2012 filed by them under Order IX Rule 7 of the Code of Civil Procedure to set aside the exparte order passed against them. The said petition was disposed of by this court on 10.12.2012, directing the revision petitioners / defendants to workout their remedies before the concerned court to set aside the exparte decree. Thereafter, as already observed the revision petitioners / defendants filed the petition under Order IX Rule 13 along with a petition under Section 5 of the Limitation Act in IA.No.1857 of 2012, praying to condone the delay of 24 days in filing the petition to set aside the exparte decree.

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7. Refusing to condone the delay in filing a petition to set aside the exparte decree can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. The learned District Munsif, Ambattur in his fair and decreetal orders dated 28.06.2013 in IA.No.1857 of 2012 had observed that the revision petitioners had not explained each and every day's delay in filing the petition under Order IX Rule 13 of the Code of the Civil Procedure. "Every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a pragmatic manner and as far as the present case is concerned, when sufficient cause is shown by the revision petitioners / defendants to set aside the exparte decree, the learned District Munsif, Ambattur had dismissed the petition and therefore, the fair and decreetal orders passed by the learned District Munsif, Ambattur warrant interference by this Court. The exparte decree passed against the revision petitioners is also set aside.

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R.HEMALATHA, J.

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8. In the result, the Civil Revision Petition is allowed. No costs.  
Consequently, the connected Miscellaneous Petition is closed.

9. Since the suit is of the year 2009, the learned District Munsif Ambattur is directed to dispose the suit in OS.No.516 of 2009 within a period of six months from the date of receipt of a copy of this order.

20.08.2019

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Index : Yes/No

To

The District Munsif Court,  
Ambattur, Chennai.

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