

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 2747 of 2019

1. N. Marisamy

2. Chinnammal ... Petitioners

Vs.

Maragathamani ... Respondent

Prayer : Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order passed in I.A. No. 336 of 2018 in O.S.No. 121 of 2014 dated 01.09.2018 passed by the Learned Sub Judge, Gobichettipalayam.

For Petitioners : Mr. S. Parthasarathy

For Respondent : Ms. WSR. Abirami

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed by the Learned Sub Judge, Gobichettipalayam in I.A. No. 336 of 2018 in O.S. No. 121 of 2014 by order dated 01.09.2018.

2. Heard, Mr. S. Parthasarathy, learned counsel appearing for the petitioners and Ms. WSR. Abirami, learned counsel appearing for the respondent.

3. The revision petitioners are the defendants in the suit in O.S. No. 121 of 2014, where suit summons have been served and they have entered appearance through their respective counsel, but seems to have not filed the written statement. Therefore, on 02.12.2014, since there was absence on the part of the defendants i.e., revision petitioners, they were set exparte.

4. After having been set exparte, the petition in I.A. No.64 of 2015 also was filed by the plaintiff to make some amendment and since, already the defendants have been set exparte, the Court below have issued notice in the said I.A. also, where also notice seems to have been served on the defendants, nevertheless they did not turn up. Therefore, the suit was decreed by way of preliminary decree on 21.08.2015. However, after a long gap of 750 days, the defendants filed the present petition in I.A. No. 336 of 2018 to condone the delay of 750 days in filing

the petition to set aside the exparte decree, dated 21.08.2015 and the said I.A. filed under Section 5 of the Limitation Act by the defendants has been rejected by the impugned order, as against which, the present revision has been filed.

5. Learned Counsel appearing for the revision petitioners / defendants would submit that, in fact for both the defendants, counsel entered appearance, the matter has been entrusted to them. The non-filing of the written statement and non appearance on their part, when the case was called for filing written statement, has not been brought to the notice of the defendants i.e., revision petitioners and only after a long time, the revision petitioners who are the defendants in the suit had come to know that exparte preliminary decree was passed against them and thereafter only they had taken steps to file a petition to set aside the exparte decree and in this regard there had been huge delay of 750 days and in order to condone the same, I.A.No.336 of 2018 was filed under section 5 of the Limitation Act.

6. Learned counsel appearing for the revision petitioners further submitted that, the non-appearance on the part of the defendants before the Court below in the suit, is not a willful exercise and the development taken place before the trial Court had not been informed to the defendants by their learned counsel.

7. However, the learned counsel appearing for the respondent submits that, the plaintiff as well as the defendants are the brothers and knowing well the proceedings went on and they have been set exparte and exparte preliminary decree has also been passed in the year 2015, these revision petitioners had allowed the said exparte decree to travel upon and after more than two years, had come forward with this petition to condone the delay and no plausible reason had been given by them in the affidavit filed in respect of the said I.A. In fact, taking into account, the factual circumstances of the case in hand, the Learned Judge of the trial Court had rightly rejected the said I.A. filed by the revision petitioners to condone the delay of 750 days. Therefore, the learned counsel appearing for the respondent contended that there is no reason to interfere with the said order.

8. I have heard the said submission made by both sides and also perused the materials placed before this Court.

9. No doubt, there is a delay of 750 days in filing the petition to set aside the exparte order. It is the stand of the revision petitioners, as projected by the learned counsel for the petitioners that, the matter is entrusted to the counsel who entered appearance and they plead that the counsel should conduct the case and inform whenever some important development had taken place, to the defendants. However according to them, the same had not been informed and they have no knowledge about the said exparte decree passed as early in the year 2015 and only after a gap of two years, they came to know that those developments have been taken place and accordingly they had taken steps to file a petition to condone the delay.

10. In view of the facts and circumstance of the case and in view of the reasons given by the revision petitioners, who are the defendants in the suit, this Court is inclined to accept the same, of course, on the heavy terms for the huge delay.

11. In view of the aforesaid discussion, this Court is inclined to allow the Civil Revision Petition with the following terms:

- "(i) That the impugned order is hereby set aside and the delay of 750 days is hereby condoned, on condition that, the revision petitioners shall pay a sum of Rs. 20,000/- (Rupees Twenty Thousand Only) to the respondent / plaintiff and the same shall be paid on or before 30 days from the date of receipt of a copy of this order, failing which, this order shall stand automatically vanished.
- (ii) No further extension of time to pay the cost imposed on the revision petitioners, would be given."

12. With these conditions, the Civil Revision Petition is allowed. No costs.

04.09.2019

Index: Yes / No
Speaking order / Non speaking order
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To

The Learned Sub Judge,
Gobichettipalayam.



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R.SURESH KUMAR, J.

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