

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.2358 of 2014

and

M.P.No.1 of 2014

1.A.A.Balu

2.G.Ganapathi

3.M.Chinnaraji

... Petitioners

Vs.

1.C.Manivasagam

2.Balasubramaniam

... Respondents

PRAYER: Civil Revision petition is filed under Section 115 of CPC, to set aside the fair and decretal order dated 26.03.2014 made in I.A.No.1396 of 2012 in O.S.No.49 of 2009 on the file of the learned District Munsif Court, Sankari.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.C.Prabakaran

ORDER

The petitioners are the plaintiffs in O.S.No.217 of 2008. The said suit was decreed on 02.09.2008. The said suit was filed against one R.Balasubramaniam 2nd respondent herein who is also the 1st defendant

2.The petitioners were arrayed as defendants No.2 to 4 in O.S.No.49 of 2009. The said suit was filed by 1st respondent C.Manivasakam.

3.In the said suit the 1st petitioner alone filed vakalat. However, no vakalat was filed by the 2nd and 3rd petitioners herein. The petitioners were set exparte on 15.06.2009.

4.Thereafter the 1st petitioner filed common affidavit on behalf of the other petitioners in an unnumbered I.A.No. of 2012 filed under Order 9 Rule 13 and Section 151 of CPC to set aside the exparte decree dated 15.06.2009 passed by the Court.

5.Since, there was delay of 1150 days, the petitioners also filed I.A.No.1396 of 2012 under Section 5 of Limitation Act and Section 151 of CPC to condone the aforesaid delay of 1150 days in filing the said application to set aside the exparte decree.

6.In the said I.A, the 1st petitioner filed common affidavit on behalf of the other petitioners to condone the delay and had given the following reasons:-

"I further submit that originally the Respondent/Plaintiff filed suit against us and before that we filed Caveat O.P.No.37/2009 on

the file of Honourable District Munsif Court, Sankari and the same is pending during filing of this suit.

I further submit that the respondent/plaintiff counsel gave notice to my Caveat counsel on record and my Caveat counsel also informed to us. At that time we are engaged in political party work as a Vice Charmian, during the period I forget entire things informed by my Caveat Counsel. Subsequent to that the above said suit and injunction application was called and injunction application also dismissed as unnecessary and suit decreed exparte on 15.06.2009.

I further submit that I filed EP proceedings against Balasubramaniam in O.S.No.217/2008 and after heard the matter the Respondent/Plaintiff by name Manivasagam instigate one Arulmurugan and filed false and baseless suit against us regarding the same suit property and I received the notice and summons from the Court in the first week of August 2008. Immediately after receiving Court notice and summons I collect certified copies of O.S.No.49/2009 before Honorable District Court, Salem on 04.09.2012 and I came to know that the above said case was decreed exparte for non filing of Vakalat for us. Immediately we filed set aside application along with section 5 Limitation Act application for adjudication of the case.

I further submit that the non appearance on 15.06.2009 is neither willful nor wanton, due to over burden of political party work I could not conduct my counsel in time and the same was decreed exparte."

7.The 2nd respondent R.Balasubramaniam did not file any

<http://www.judis.nic.in> counter. The said C.Manivasakam had filed a counter and submitted

that the petitioners have not made out sufficient cause for condoning the delay.

8.The Court has dismissed the application for condoning the delay on the ground that despite pendency of two other suits in O.S.No.217 of 2008 and O.S.No.250 of 2012, the petitioners have not given the sufficient explanation as to why they did not participate in O.S.No.49 of 2009.

9.It has been further observed that the 2nd and 3rd petitioners have also not filed vakalat and each days delay has not been explained. The order is premised on the observations that O.S.No.217 of 2008 and O.S.No.250 of 2012 were pending as on date, though the O.S.No.217 of 2008 had been decreed on 02.09.2008. There are conflicting suits and decisions in respect of same subject. On the one hand the petitioners have got a decree in their favour in O.S.No.217 of 2008 while the 1st respondent has an exparte decree in O.S.No.49 of 2009.

10.Whether the first respondent Manivasakam/ the plaintiff was indeed entitled the permanent injunction as prayed for in O.S.No.49 of 2009 has to be tested on merits, in view of an earlier decision in O.S.No.271 of 2008 on the same subject.

11. Consequently, I am of the view even though the petitioners have been negligent, nevertheless to meet the ends of justice, the case has to be decided on merits. Since, the petitioners have been negligent in not filing the application on an earlier occasion and slept over almost more than 3 ¼ years (1150 days), I am of the view that to meet the ends of justice, the present Civil Revision Petition can be allowed on terms.

12. The petitioners are therefore directed to deposit a sum of Rs.10,000/- to the credit of O.S.No.49 of 2009 before District Munsif Court, Sankari within four weeks from the date of receipt of a copy of this order. On such deposit the 1st respondent shall be entitled to withdraw the same. Since the present Civil Revision Petition is being allowed, the unnumbered I.A filed under Order 9 Rule 13 of CPC is also allowed to save time.

13. The petitioners shall file their written statement within four weeks from the date of receipt of a copy of this Order. The suit is of the year 2009. The District Munsif Court, Sankari shall thereafter frame issues and conduct the trial and dispose the same after hearing the parties within a period of nine months from the date of receipt of a copy of this order.

C.SARAVANAN, J.

14.This Civil Revision Petition stands allowed with above
observations. Consequently, connected Miscellaneous Petition is also
closed.

30.04.2019

Index:Yes/No

Internet :Yes/No
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To

1.The District Munsif Court,
Sankari.

2.A.A.Balu,
S/o.Annamalai,
Pattanampatoo Pudur Village,
Sankari Taluk, Salem District.

3.G.Ganapathi
S/o.Ganesan,
Azhaganu, Ernapuram Village,
Sankari Taluk, Salem District.

4.M.Chinnaraji,
W/o.Muthupaiyan,
Nandhipattan Valavu, Pudur Village,
Sankari Taluk, Salem District.

5.The Section Officer,
V.R.Section, High Court, Madras.

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