

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. PD No.4227 of 2018

and

CMP No.23199 of 2018

1.G.Ayyadurai
2.K.Chitra
3.G.Thamilarasi

.. Petitioners

Vs.

Ranganathan

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order dated 29.08.2018 passed in I.A.No.11 of 2018 in O.S.No.874 of 2010 by the learned Additional District Munsif, Alandur, dismissing the petition for condoning the delay in the petition filed to restore the above suit.

For petitioners : M/s.R.Radha Pandian

For respondent : Mr.S.Sairaman

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Additional District Munsif, Alandur in I.A.No.11 of

2018 in O.S.No.874 of 2010, which is an application filed to condone the delay of 632 days in filing the application for setting aside the ex-parte decree.

2. The facts in brief are as follows :

The respondent herein had filed a suit in O.S. No.874 of 2010 against the revision petitioners for a bare injunction. The defendants, who had initially entered appearance and filed the written statement, failed to contest the suit and ultimately an ex-parte decree came to be passed by a judgment and decree, dated 28.01.2016.

3. After the decree was passed, the revision petitioners have come forward with the application, which is the subject matter of this revision, wherein, they have stated that their paternal uncle was the person who was totally incharge of all the family affairs since their father had died as early as 13.06.1990. When the deponent to the affidavit viz., G.Ayyadurai / 1st petitioner had visited the property, he came to know that the respondent had obtained an ex-parte judgment. The first petitioner immediately tried to get in touch with the counsel. However, there was no

response from the counsel and thereafter, he had engaged the present counsel and after the new counsel had taken over, he had applied for the certified copies of the judgment and decree and, thereafter, the application came to be filed. In the said application, the petitioners further stated that there was a connected suit in O.S. No.834 of 2010 with reference to the very same property and they were genuinely under the impression that the present suit (O.S. No.874 of 2010) was tried along with O.S. No.834 of 2010, which was decreed in their favour. The revision petitioners further stated that they had come to know about the judgment and decree dated 28.01.2016 only on 10.09.2017. However, they had filed an application for condoning the delay from the date of the decree onwards.

4. It is seen from the records that the plaintiff had remained ex-parte and not contested the said application. However, the learned Judge has proceeded to dismiss the application only on the ground that he was not able to accept the reasons given for the delay.

5. Challenging the said order, the revision petitioners are before this Court.

6. Heard the learned counsel on either sides.

7. A perusal of the affidavit filed in support of the petition would clearly show that the defendants have given a very valid reason, which had prevented them from participating in the proceedings. They had in fact, been under a mistaken belief that the connected suit (O.S. No.834 of 2010) having been decreed in their favour, this suit (O.S. No.874 of 2010) would also automatically enure to their benefit and it is only when they visited the property that they had come to know about the ex-parte order. Though knowledge is from 10.09.2017, it is seen that the defendants had sought to have the delay condoned right from the date of the decree. The learned Judge ought to have taken a liberal approach for condoning the delay by imposing costs on the revision petitioners. The suit is also one for bare injunction.

8. In the result, the Civil Revision Petition stands allowed and the order in I.A. No.11 of 2018 is set aside, on condition that the revision petitioners shall pay a sum of Rs.5000/- to the learned counsel for the respondent.

9. Considering the reasons given in the condone delay application and the submissions on either side, this Court deems it fit to direct the Court below viz., the District Munsif, Alandur, to number the set aside application and allow the same and thereafter, dispose of the suit, which is filed as early as in the year 2010, within a period of four months from the date of receipt of a copy of the order. The costs of Rs.5,000/- has also been paid by the learned counsel for the petitioner to the learned counsel for the respondent. Therefore, the learned Judge is directed to forthwith number the ex-parte application for setting aside the ex-parte decree and allow the same and thereafter, dispose of the suit, within a period of four months from the date of receipt of a copy of the order. No costs. Consequently, connected miscellaneous petition is closed.

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29.04.2019

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order

vsi2

P.T. Asha, J.

vsi2

To
The Additional District Munsif,
Alandur.



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