



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2019

CORAM

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**C.R.P. (NPD) (MD) No.1972 of 2009

Thevaraj

:Petitioner/Petitioner

Vs.

1.Manickam

2.Veerasamy

3.Sivakumar

4.Sureshkumar

:Respondents/Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the order dated 01.09.2009 made in I.A.No.315 of 2008 in O.S.No.72 of 2006 on the file of the District Munsif-cum-Judicial Magistrate Court, Bodinayakanur.

For Petitioner : Mr.R.Suriyanarayanan

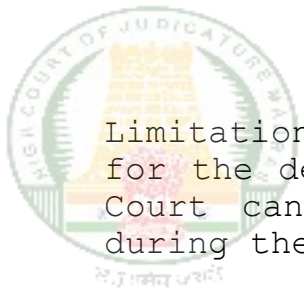
For Respondents : Mr.S.Kadarkarai

ORDER

This Civil Revision Petition is filed as against the order dismissing the petition filed by the revision petitioner to condone the delay of 56 days in filing a petition to set aside the *ex parte* decree.

2.The respondents herein, as plaintiffs, filed the suit in O.S.No.72 of 2006 for permanent injunction in respect of a property, which is described as a house site. The suit was decreed *ex parte* on 16.09.2008. Thereafter, the revision petitioner filed an application to condone the delay of 56 days in I.A.No.315 of 2008 in filing a petition to set aside the *ex parte* decree along with the petition to set aside the *ex parte* decree. The said petition was dismissed by the lower Court on the ground that the petitioner has failed to explain each day delay. Aggrieved by the same, the present petition has been filed.

3.The learned Counsel for the respondents submitted that the delay has not been properly explained and no sufficient cause or acceptable reason has been given by the revision petitioner. The revision petitioner let in oral evidence. The evidence of PW-1 and PW-2 was referred to, but discarded by the lower Court on the ground that the reasons stated by PW-1 and PW-2 was not pleaded by the revision petitioner in the petition. Though the lower Court is partly correct, in a petition filed under Section 5 of the



Limitation Act, 1963, the Court is more concerned with the reasons for the delay. Even if no reason is stated in the affidavit, the Court can always consider the reasons stated by the defendants during their examination.

4. The Court need not assume that no valid reason has been given, merely because, the petition filed to condone the delay does not disclose the facts, which are given at the time of examining the party himself. In these kind of cases, the Court is always expected to show some lenience, so that the parties may get a verdict on merits. The explanation offered by the revision petitioner was that the petitioner was affected with jaundice and that therefore, he could not contact his Advocate to know about the case details. Having regard to the explanation offered by the revision petitioner that he could not contact his Advocate due to jaundice, the lower Court ought to have considered the same as a valid explanation.

5. Having regard to the fact that the delay is only 56 days and the reasonings of the revision petitioner cannot be negated in the absence of any other evidence contradicting his statement, this Court is of the view that the lower Court ought not to have dismissed the petition, only on the ground that the petitioner has not come forward with proper plea in the affidavit filed in support of the petition before the lower Court.

7. As a result, this Civil Revision Petition is allowed and the order passed in I.A.No.315 of 2008 in O.S.No.72 of 2006 on the file of the District Munsif-cum-Judicial Magistrate Court, Bodinayakanur, dated 01.09.2009, is set aside. The petition in I.A.No.315 of 2008 in O.S.No.72 of 2006 stands allowed on condition that the petitioner pay a sum of Rs.5,000/- to the respondents within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The District Munsif-cum-Judicial
Magistrate Court, Bodinayakanur.

+1CC TO MR.S.KADARKARAI, Advocate Sr. No.75346

+1CC TO MR.R.SURIYANARAYANAN, Advocate Sr. No.75299

C.R.P.(PD)(MD)No.1972 of 2009

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