



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.08.2019
CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (MD) (PD) No. 2428 of 2012
and
M.P. (MD) No. 1 of 2012

1. Asokan
2. Amutha

: Petitioners / Petitioners/
Defendants 3&5

vs.

Kalavathy

: Respondent / Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the fair and decreetal order in I.A.No.490 of 2012 in O.S.No.68 of 2008, dated 11.09.2012 on the file of the Subordinate Court, Pudukottai.

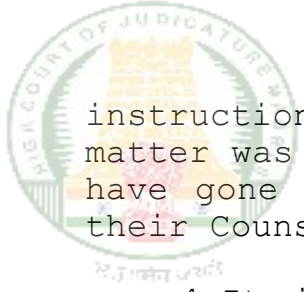
For Petitioners : Mr.R.P.Ramachanthiran
For Respondent : Mr.K.Bala Sundaram

ORDER

This Civil Revision Petition is directed against the order passed by the learned Subordinate Judge, Pudukottai, in I.A.No.490 of 2012 in O.S.No.68 of 2008, dated 11.09.2012.

2.The respondent/plaintiff filed the suit in O.S.No.68 of 2008 for partition. It is stated that the suit was decreed *ex parte* and a final decree was also passed on 30.09.2011. It is stated that the Counsel appearing for the revision petitioners reported no instructions, when the matter was called on 21.09.2009 and that the revision petitioners were set *ex parte* on 21.09.2009. The revision petitioners, thereafter, filed a petition to set aside the *ex parte* decree along with the petition in I.A.No.490 of 2012 to condone the delay of 178 days in filing the petition to set aside the *ex parte* decree in the suit in O.S.No.68 of 2008. The said petition was dismissed by the trial Court even though the revision petitioner has given sufficient reasons. Aggrieved by the same, the above revision petition has been filed.

3.In the affidavit filed in support of the petition to condone the delay, the revision petitioner, of course, has not given any reason. However, it is stated by the revision petitioner that the revision petitioners have gone to some other place to eke their livelihood and that they could not contact their Counsel to give



instructions to cross examine the witness at the time, when the matter was posted in the list. The explanation that the petitioners have gone from their native place and that they could not contact their Counsel cannot be discarded.

4.It is true that each days delay has to be explained. That does not mean that the Court should adopt a stringent attitude. In a case like this, the Court may show some indulgence to the party, who is asking to set aside the *ex parte* decree, so that there will be a decision based on merits, after giving opportunity to both sides. The lower Court has dismissed the application to condone the delay unmindful of settled law and the irreparable injury that may be caused to one of the litigants.

5.In the said circumstances, this Civil Revision Petition is allowed and the order in I.A.No.490 of 2012 in O.S.No.68 of 2008 is set aside and the petition in I.A.No.490 of 2012 in O.S.No.68 of 2008 stands allowed. Considering the pendency of the suit for a long time, the learned Subordinate Judge, Pudukottai, is directed to expedite the trial and dispose of the suit in O.S.No.68 of 2008 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

The Subordinate Judge, Pudukottai.

+1 CC to Mr.K.BAALASUNDHARAM, Advocate (SR-80508[F] dated 08/08/2019)

C.R.P.(MD)(PD)No.2428 of 2012
07.08.2019

cmr

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