



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(PD) (MD)No.768 of 2011

and

M.P.(MD)No.1 of 2011

Pandi : Petitioner/Petitioner/Defendant
.. Vs ..
Pandiammal : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the order of dismissal passed by the learned Subordinate Judge of Virudhunagar in I.A.No.202 of 2010 in O.S.No.15 of 2008, dated 12.11.2010 dismissing the application filed under Section 5 of the Limitation Act by the petitioner to condone the delay of 539 days in filing the application to set aside the order of an ex parte order dated 09.01.2009 in O.S.No.15 of 2008 on the file of the learned Subordinate Judge, Virudhunagar.

For Petitioner : Mr.G.Mariappan
For Respondent : Mr.P.Santhanakrishnan

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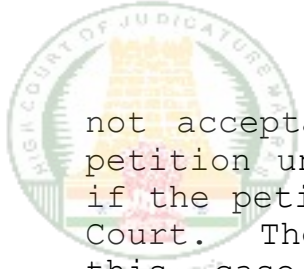
ORDER

The defendant in the suit in O.S.No.15 of 2008 on the file of the Sub Court, Virudhunagar, is the petitioner in the above Civil Revision Petition.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The respondent filed the suit in O.S.No.15 of 2008 for partition of her $\frac{1}{2}$ share in all the suit properties which are described as items 1 to 4 in the suit schedule. The suit came to be decreed ex parte on 21.01.2009. Thereafter, the revision petitioner filed an interlocutory application to set aside the ex parte decree and to condone the delay of 539 days in filing the petition to set aside the ex parte decree dated 21.01.2009. The petition filed under Section 5 of the Limitation Act in I.A.No.202 of 2010 was dismissed by the trial Court holding that the petitioner has not explained the delay with acceptable cause. Aggrieved by the same, the above Civil Revision Petition is preferred.

2.2.In the affidavit filed in support of the petition to condone the delay, the revision petitioner has stated that he has entrusted his case to an Advocate by name Mr.Thangapandian and that he has not given any information about the hearing of the suit or ex parte decree on 09.01.2009. The lower Court though considered the explanation/cause shown by the petitioner found that the reasons are



not acceptable. The lower Court proceeded on the basis that the petition under Section 5 of the Limitation Act can be allowed only if the petitioner explains each day delay to the satisfaction of the Court. The reasons given by the petitioner cannot be ignored. In this case, though the delay is inordinate, the petitioner's explanation that his counsel did not inform him about the day-to-day hearing and about the *ex parte* decree cannot be rejected unless there are other materials to show that the petitioner had knowledge about the *ex parte* decree even earlier.

3. The lower Court has found that the petitioner was given sufficient opportunity to file written statement and that the matter was ultimately taken up on 21.01.2009 for filing written statement and the *ex parte* decree was passed as the petitioner failed to file written statement. The suit was filed in 2008. The fact that no written statement was filed till the suit was decreed *ex parte* is not in dispute. However, the petitioner's affidavit explaining the delay cannot be ignored in the present case as no material is available to discredit the statement of the petitioner. Though the reasons given by the petitioner are embarrassing as he has made some allegations against his own Advocate who has conducted the case on his behalf, the court is always inclined to show some leniency so that the parties may get a decision on merits after giving full opportunities to the parties. In that view of the matter, considering the fact that the delay is more than 1½ years and serious prejudice is also caused to the respondent, this Court is inclined to allow this Civil Revision Petition on terms. Accordingly, this Civil Revision Petition is allowed. The petition filed by the revision petitioner in I.A.No.202 of 2010 in O.S.No.15 of 2008 to condone the delay of 239 days stands allowed on condition that the petitioner pays a sum of Rs.10,000/- (Rupees Ten Thousand only) to the respondent within a period of three weeks from the date of receipt of a copy of this order. Upon showing the proof of payment before the lower Court, the lower Court is directed to proceed with the trial. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

The Subordinate Judge,
Virudhunagar.

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-74590[F] dated 10/07/2019)

C.R.P (PD) (MD) No.768 of 2011

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