



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.11.2019**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1744 of 2013

and

M.P. (MD) No.1 of 2013

WEB COPY

- 1.Gurusamy Naidu (died)
- 2.Subbulakshmi
- 3.Ayyalu
- 4.Santhi
- 5.Ayyammal
- 6.Panchavarnam
- 7.Gurusamy
- 8.Sudha
- 9.Mahalakshmi
- 10.Parameshwaran

(petitioners 2 to 10 are brought on record as Lrs of the deceased sole petitioner vide order dated 23/06/2015 made in MP.1/14 IN CRP.1744 of 2013) ... Petitioners
vs.

Soosaimanickam

... Respondent

Prayer:- This Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 09.07.2013 passed in I.A.No.249 of 2012 in O.S.No.33 of 2000 by the learned District Munsif, Nilakkottai.

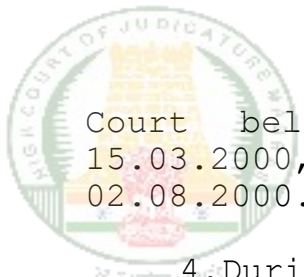
For Petitioners : Mr.J.Barathan
For Respondent : Mr.Babu Rajendran

ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No.249 of 2012 in O.S.No.33 of 2000 filed by the petitioner/defendant to condone the delay of 1761 days in filing the petition to set aside the *ex parte* decree dated 17.07.2017 on the file of the District Court, Nilakkottai.

2.The parties are referred to in the same array as in the suit and the facts, which are necessary for disposing the above civil revision petition, are as follows:

3.The respondent herein/plaintiff has originally filed a suit O.S.No.33 of 2000 on the file of the District Munsif Court, Nilakkottai, for injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property. Pending the suit, an application in I.A.No.82 of 2000 for an Ad-interim injunction has also taken up by the plaintiff. The



Court below has initially granted Ad-interim injunction on 15.03.2000, which also made absolute subsequently, by order dated 02.08.2000.

4. During the period of injunction, according to the plaintiff, the defendant had put up a construction by which his easementary right of Air, Light etc., was restricted. This constrained the plaintiff to file an amendment petition in I.A.No.268 of 2000 to amend the plaint to include the relief of declaration and mandatory injunction and the same has also been allowed by the Court below, by order dated 02.01.2007.

5. Since the defendant had not filed his written statement in the original suit, he was called absent and set *ex parte* on 13.07.2007 and ultimately, an *ex parte* decree came to be passed on 17.07.2007. Thereafter, the defendant has come forward with the application in I.A.No.249 of 2012 on 29.06.2012 and in the affidavit filed in support of that application, the defendant contended that 15 days prior to 13.07.2007, he had fallen down in the garden and sustained injury in his leg and therefore, he was unable to appear before the Court on 13.07.2007. Thereafter, he has been suffering from Diabetics for which he was undergoing treatment. While so, the petition filed by plaintiff in DRP.No.25 of 2009 seeking to return all the original documents was allowed on 25.01.2010, though the defendant has not appeared before the Court below on that day.

6. The defendant would further contend that only at the time of receiving the notice in DRP.No.25 of 2009 on 25.01.2010, he came to know about the *ex parte* decree dated 17.07.2007. Thereafter, once again he had taken treatment from 30.06.2010 to 09.07.2010 and from 13.07.2010 to 14.07.2010 as in-patient at Apollo Hospital, Madurai. On account of his illness, he was unable to stand-up and walk and for these reasons, he was unable to meet his counsel. Meanwhile, the plaintiff had filed E.P.No.58 of 2011 and the defendant had received the summons asking him to be present on 04.01.2012. On 04.01.2012, the defendant's counsel had entered appearance and collected certain documents for preparing the written statement and thereafter, the defendant could not meet his counsel, since he was admitted as in-patient from 07.02.2012 to 21.02.2012 at Apollo Hospital, Madurai. Therefore, the defendant would contend that the delay is neither wilful nor wanton and hence, he prays for setting aside the order passed in I.A.No.249 of 2012 in O.S.No.33 of 2000.

7. The plaintiff had contested the said application *inter alia* contending that the defendant was well aware of the proceedings and he was deliberately fencing sitting and not participating in the proceedings. He would further contend that the reasons given by the defendant appear to be false and that apart, there are several gaps in the period when the defendant claimed that he was unable to meet his counsel to give him details.



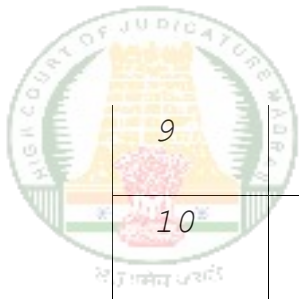
8. The learned District Munsif, Nilakkottai, on a consideration, was pleased to dismiss the application in I.A.No.249 of 2012 and the same is the subject matter before this Court.

9. Heard the learned counsel on either side and perused the papers.

10. Mr. J. Barathan, learned counsel appearing for the defendants would contend that sufficient cause has been shown for the defendant's non appearance before the Court below on 13.07.2007. However, Mr. M. R. Murugan, learned counsel appearing for the plaintiff would contend that the reasons for the delay have not been sustained and even the documents that has been filed before the trial Court in the impugned petition would clearly demonstrate that there are several periods during which the defendant has not suffered from any ailment but has been fit. In fact, the documents that has been filed by the defendant is only from the period 13.07.2010 onwards, whereas, the ex parte order had been passed as early as on 13.07.2007 and there is no explanation for this period. Therefore, it is necessary to extract the dates and events and the same is given below:

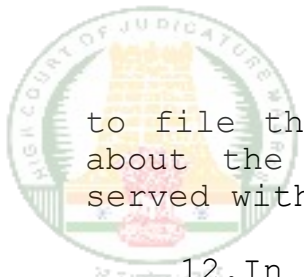
DATES AND EVENTS FILED BY THE RESPONDENT

S.No.	DATE	EVENTS
1	17.08.1989	Sale deed executed in favour of the respondent
2	15.03.2000	Plaint filed by the respondent in O.S.No.33/2000 before the learned District Munsif, Nilakkottai, for bare injunction
3	15.03.2000	Ad-interim injunction granted in favour of the respondent
4	20.03.2000	Pending injunction order, the revision petitioner illegally put up construction and also restrained respondent's easementary right of Air and Light.
5	30.03.2000	The revision petitioner filed counter affidavit and denied the plaintiff's right of Air, Light etc.,
6	02.08.2000	Trial in I.A.No.82 of 2000
7	2000	Amended petition filed by the respondent/plaintiff in I.A.No.268/2000 in O.S.No.33/2000, declaration and mandatory injunction added.
8	17.03.2006	C.M.A.No.53 of 2004 against I.A.No.82 of 2000 is dismissed.



9	02.01.2007	I.A.No.268/2000 in O.S.No.33/2000 allowed by the learned District Munsif.
10	13.07.2007	Revision petitioner called absent set ex parte by the trial Judge (No written statement filed)
11	17.07.2007	Suit decreed ex parte with cost.
12	2009	Document return petition (DRP) filed by the respondent in DRP No.25 of 2009
13	2009	Summons received by the revision petitioner/defendant
14	25.01.2010	Document Return Petition (DRP) allowed by the learned trial Judge
15	12.08.2011	Execution Petition filed by the respondent in E.P.No.58/2011 in O.S.No.33/2000
16	07.12.2011	Court notice, Poster notice served to the revision petitioner in E.P.No.58/2011, Mr.N.Mathavarajan filed Vakalat on behalf of respondent/revision petitioner.
17	29.06.2012	Ex parte set-aside petition filed by the revision petitioner in I.A.No.249/2012 in O.S.No.33/2000
18	29.06.2012	Delay condone petition (1761 days) filed by the revision petitioner in I.A.No.250/2012 in O.S.No.33/2000
19	25.08.2012	Counter filed by the respondent/plaintiff
20	09.07.2013	Order passed by the learned District Munsif in I.A.Nos.249&250/2012 in O.S.No.33/2000
21	02.09.2013	Order passed in E.P.No.58/2011 in O.S.No.33/2000
22	17.10.2013	Revision Petition filed by the petitioner.

11.A mere perusal of the above dates and events would clearly show how the defendant has not bothered to contest the proceedings and even the affidavit which is filed in support of the application to condone the said delay, is silent for the period from 17.03.2006, when the appeal filed by the defendant in CMA.No.53 of 2004 till 13.07.2007, when the revision petitioner was called absent. In the petitioner's affidavit, sufficient reason with regard to the delay has not been given as to why the petitioner has not taken any steps



to file the petition atleast on 25.01.2010, when he came to know about the ex parte order dated 17.07.2007 and when he had been served with summons in DRP.No.25 of 2009.

12.In view of the foregoing discussions and considering the facts and circumstances of the case, this Court finds that the reasons given for condoning the delay are not sufficient and the petitioner is not able to explain the reason for the delay properly and convincingly.

13.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (w)

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/ /2020

Sub Assistant Registrar(CS)

mm

To

The District Munsif,
Nilakottai.

+1 CC to M/s.BABU RAJENDRAN, Advocate (SR-97801[F] dated 13/11/2019
+1 CC to M/s.T.R. JEYAPALAM, Advocate (SR-97865[F] dated 13/11/2019

C.R.P. (MD) No.1744 of 2013
12.11.2019

SMA/13/01/2020/5P/4C