



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date :21.06.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.934 of 2019

1.A.Packiam
2.M.Kaliammal

... Petitioners/Petitioners/Defendants

Vs

Mallika ...Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC, against the fair and decreetal order dated 07.03.2019 made in I.A.No.2056 of 2018 in O.S.No.424 of 2012 on the file of the District Munsif Court, Melur.

For Petitioners : Mr.PTS.Narendravasan

O R D E R

This Civil Revision Petition has been filed under Section 115 of CPC against the fair and decreetal order dated 07.03.19 made in I.A.No.2056 of 2018 in O.S.No.424 of 2012 on the file of the District Munsif Court, Melur. By the said order, the Court below refused to condone the delay of 1599 days to set aside the *ex parte* decree passed against this Civil Revision Petitioners.

2. The petitioners would aver among other things that there was a civil dispute between the petitioners and the respondent herein. Originally, the respondent herein filed O.S.No.424 of 2012 on the file of the District Munsif Court, Melur, Madurai against the petitioners herein for permanent injunction and for other reliefs prayed therein in which the first petitioner filed her written statement only on 07.08.2018. Thereafter, on the same date, the petitioners jointly filed an affidavit stating that they are not the real owners of the subject matter of the property and their husband is the actual owners of the property and the second petitioner's husband is living in chennai for the past 20 years and no personal summons in the main suit was served upon her. Stating all these facts, they sought to dismiss the *ex-parte* decree passed on 21.02.2014 in favour of the respondent, which was negatived by the Court below and as against which, the petitioners are before this Court for the relief stated supra.

3. The learned counsel for the petitioners would contend that the second petitioner's husband was in abroad for the past 20 years and therefore, the written statement could not be filed in



time and the ex parte decree dated 21.12.2014 was known to them only on 30.07.2018 on the compliant given by the respondent. Further, the suit filed by the respondent herein is not maintainable as it has not been filed against the original owners. Thus, he prays for setting aside the order of the Court below.

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4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. A perusal of the record would show that at paragraph No.11, the Court below has recorded the finding that summons was duly served on the second petitioner and proper acknowledgment had been filed in the Court for having served on her. Therefore, the contention of the petitioners that the second petitioner was not duly served, cannot be accepted by this Court. At the best, it can be presumed that the second petitioner is not interested in prosecuting the case. Similarly, on behalf of the first petitioner, an advocate appeared and for filing counter statement, he consumed more than one year and eventually, he had filed his counter only on 20.01.2004. Needless to mention, as per Order 8 Rule 1 CPC, 1908, the counter should be filed within 90 days from the date of summons served upon the litigant. Further, there is no record to show that the first petitioner's husband permanently stayed in foreign country and therefore, she could not proceed the case. A person who claims that he is in foreign country, he has to produce passport before the court below to substantiate the fact that at any point of time he never visited India so that this Court can protect interest of the litigants. Even assuming that the first petitioner's husband could not conduct the case, nothing prevented the party from using technological advancements, like, letter, telephone, email, whatsapp, facebook and so on and so forth. Being the husband and wife, definitely, there is every possibility that they could have spoken with each other on this subject. Further, if a person travels abroad for his livelihood, atleast once in three years, he used to visit for his personal cause. It is also generally expected that the person who goes to abroad would visit, during festival seasons, like pongal, deepavali and family function like marriage, earborning ceremony, temple festival and so on and so forth. Just because, a person who is in aboard, the delay cannot be condoned abruptly. The Supreme Court as well this Court has time and again has held that there must be sufficient cause or reason to condone the each and every day delay or else the right of the real parties interest would be in peril and it will become an endless litigation. A person who is not bothered to prosecute the case in time prudently would naturally suffer and that is the reason why, the framers of the Constitution has got check and balances in the Civil Procedure Code by granting 90 days time to file counter. Viewed from any other angle, the reasons adduced by the second petitioner could not be acceptable one. The court below has not only dealt with the matter factually, but also legally, by sailing various judgments of the Court in which no infirmity could be found. To sum up, no oral or documentary evidence have been placed for interfering with the



orders of the Court below and the order of the Court below is a just and proper and therefore, there is no scope of warranting circumstances to disturb the impugned order of the Court below.

6. In view of the foregoing reasons, the Civil Revision Petition is dismissed. However, there will be no order as to costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)

TO

The District Munsif Court,
Melur.

Copy to:-

1. The Section Officer,
V.R. Records,
Madurai Bench of Madras High Court.
Madurai. (2 COPIES)

2. Mallika,
W/o. Mani,
Jothi Nagar,
Melur Taluk,
Madurai District

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BALA
KK/SAR/25.07.2019/3P-5C