



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

CORAM

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THE HON'BLE MR.JUSTICE J.NISHA BANU

C.R.P.(MD) No.1106 of 2019

1.Muniasamy
2.Veeramani
3.Kalimuthu
4.Thangam

... Petitioners/Defendants

-Vs-

Senthurpandian

...Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order passed in I.A.No.342 of 2018 in O.S.No.59 of 2017 dated 05.01.2019 on the file of the District Munsif, Muthukulathoor.

For Petitioners : Mr.K.Selvam
For Respondent : Mr.K.Veluchamy

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.342 of 2018 in O.S.No.59 of 2017 dated 05.01.2019 on the file of the District Munsif, Muthukulathoor.

2.The respondent herein as plaintiff filed a suit in O.S.No.59 of 2017 against the petitioners 1 to 4/defendants for declaration and permanent injunction. On 19.03.2018, the petitioners herein were called absent and exparte decree was passed. To set aside the same, the petitioners filed an application along with Section 5 application to condone the delay of 82 days in filing the restoration petition by stating that the first petitioner was suffering from jaundice and hence, he could not able to attend the Court. The Court below declined to condone the delay, against which, this revision is filed.

3.The learned counsel for the respondent would state that the petitioners have not explained each and every delay for their non appearance and they did not produce the document to show that the first petitioner was suffering from jaundice. Though the case has



been posted for number of times ie. on 21.12.2017, 30.01.2018, 12.02.2018 and 02.03.2018 for filing written statement, the petitioners/defendants did not appear before the Court below. Finally the learned trial Judge posted the matter on 19.03.2018 for filing written statement and that day also, the petitioners/defendants did not appear and hence, *exparte* decree was passed on 19.03.2018, after giving several opportunities to the petitioners.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. Perusal of record shows that the learned trial Judge has elaborately referred the various judgments and dismissed the application. In my considered opinion, to meet the ends of justice and to render substantial justice to the parties concerned, one opportunity may be given to the petitioners herein for filing of the written statement. The petitioners shall file the written statement within a period of one week from the date of receipt of a copy of this order. Accordingly, the *exparte* order passed in I.A.No.342 of 2018 in O.S.No.59 of 2017 is set aside and this Civil Revision Petition is allowed on condition to pay cost of Rs.1000/- by the petitioners to the respondent within a period of one week from the date of receipt of a copy of this order.

6. Since the suit is of the year 2017, the learned District Munsif, Muthukulatoor is directed to conduct trial of the suit in O.S.No.59 of 2017 on day-to-day basis and dispose of the same on merits and in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the Court below for early disposal of the case. If the petitioners herein fail to co-operate for the disposal, the learned trial Judge is at liberty to pass appropriate order in accordance with law.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

msa



To,

1.The District Munsif
Muthukulathoor

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+1CC TO MR.K.VELUCHAMY, Advocate Sr. No.81898

+1CC TO MR.K.SELVAM, Advocate Sr. No. 81447

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SE (CO)

TR (27.08.2019) 3P 4C