



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.10.2019

CORAM

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD)No.1823 of 2019

Seenivasaga Reddiyar (died)

1.Subbulakshmi

2.Vasantha

3.Jayanthi

4.Jeya Pondy

... Petitioners/Petitioners/Defendants

Vs.

Jegadeesan

... Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order in I.A.No.1 of 2019 in O.S.No.156 of 2014 passed by the learned Principal District Munsif, Aruppukottai, dated 14.06.2019.

For Petitioners : Mr.K.P.Narayanakumar

ORDER

The above civil revision petition has been filed challenging the order dated 14.06.2019 passed in I.A.No.1 of 2019 in O.S.No.156 of 2014 by the learned Principal District Munsif, Aruppukottai, dismissing the petition filed under Section 5 of the Limitation Act, to condone the delay of 110 days in filing the petition to set aside the *ex-parte* decree dated 05.07.2018.

2.The respondent/plaintiff had filed a suit for declaration and consequential injunction. The revision petitioners/defendants was set *ex parte* and an *ex parte* decree came to be passed on 05.07.2018. Therefore, I.A.No.01 of 2019 has been moved by the

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petitioners/defendants to condone the delay of 110 days in filing the appeal to set aside the *ex parte* decree. In the affidavit filed in support of the said petition, the first petitioner would contend that she was suffering from virus fever and she was advised to take rest. Therefore, she was unable to be present before the Court and an *ex parte* decree came to be passed and that the same was only an Act of God. Therefore, the *ex parte* order has to be set aside and the delay in filing the application ought to be condoned.

3.The respondent/plaintiff had filed a detailed counter wherein he has stated that the petitioners/defendants had been set *ex parte* even as early as 28.02.2017, when the suit was posted for filing the written statement, there was no representation on the side of the petitioners. Thereafter, the case was adjourned on various dates i.e., 21.03.2017, 11.04.2017, 26.04.2017, 29.04.2017, 24.05.2017 and 06.06.2017 and ultimately, the suit was posted for judgment on 22.06.2017. It appears that the suit was once again re-opened for clarification with reference to framing of issue and the case was adjourned for several hearings thereafter and ultimately, on 05.07.2018 *ex parte* decree was passed. Therefore, the respondent/plaintiff would contend that the application was *mala fide* and that sufficient reason has not been put forward by the defendants.

4.Heard the learned counsel appearing for the petitioners and perused the papers.

5.A perusal of the affidavit filed in support of the application to condone the delay, would clearly indicate that no reason whatsoever has been given for the delay. Further, it is seen from the order passed by the learned Principal District Munsif that the defendants have been set *ex parte* as early as 28.02.2017 and till 05.07.2018 no steps have been taken by the petitioners/defendants to set aside the *ex parte* order. The petitioners/defendants had taken out the application to set aside the *ex parte* with the delay of 110 days, which has not been satisfactorily explained. It is no doubt true that the Court should not take a pedantic view, while dealing with the application for condoning the delay. However, it is also imperative for the party coming to Court seeking to condone the delay to furnish sufficient reasons for the delay. In the absence of such reasons being adduced, the court below was right in dismissing the petition to condone the delay of 110 days in filing the petition to set aside the *ex parte* decree. Hence, I do not find any infirmity in the order passed by the trial Court.



6.In view of the above, this Civil Revision Petition is dismissed. It is needless to state that it is open to the revision petitioners to challenge the *ex parte* decree in the manner known to law. No costs.

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Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

cp

To

The Principal District Munsif, Aruppukottai.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate SR-92392.

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