

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAM

C.R.P.No.1083 of 2018 and

C.M.P.No.5666 of 2018

Kumaravel ...Petitioner/Respondent/Plaintiff

.Vs.

Poomathi ...Respondent/Petitioner/2nd Respondent

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 27.03.2017 passed in I.A.No.810 of 2016 in O.S.No.136 of 2011 on the file of District Munsif, Dharapuram.

For Petitioner : Mr.B.Kumarasamy

For Respondent : No appearance

O R D E R

The plaintiff in O.S.No.136 of 2011 is on revision aggrieved by an order of the trial court condoning the delay of 863 days in setting aside the exparte decree that was passed on 17.04.2014.

2. The reasons assigned for the delay was that there was no exparte order against the 2nd respondent, who is the petitioner before the trial court. It is further claimed that the 2nd defendant came to know about the exparte decree only on 26.09.2016. Hence the delay had occurred. This application was opposed by the plaintiff raising various contentions including the contention that the delay has not been satisfactorily explained. The learned trial Judge upon examining all the records found that the 2nd defendant was not set exparte at all in the suit. Since there was a dispute as to whether the 2nd defendant was set exparte or not in the suit, I have called for the records. On perusal of the endorsements of the trial court on the plaint shows that the 2nd defendant, was in fact set

exparte on 12.08.2011. However, the said exparte order was set aside and the written statement filed by the 2nd defendant was taken on file on 12.09.2011. Thereafter, the suit was adjourned for amending the name of the 3rd defendant and notice was served on the 3rd defendant after amendment. Since the 3rd defendant did not file written statement, he was set exparte on 07.01.2014 and the learned trial court had posted the suit for exparte evidence on 17.02.2014 over looking the fact that the suit should have been posted for framing of issues. Therefore, the trial court found that it is the mistake of the court and hence it condoned the delay.

3. I have heard Mr.B.Kumarasamy, learned counsel for the petitioner. Mr.B.Kumarasamy, learned counsel appearing for the petitioner vehemently contended that the trial court erred in accepting the reasons for the delay.

5. I am unable to accept the reasons of the learned counsel for the petitioner. It is made clear that it is the mistake of the court and the same was rectified. The Court cannot stand on technicalities and reject the application for condonation of the delay of 863 days. The Court should not allow its mistake to prejudice any of the parties to the lis. The trial court has just done that. I do not think that I should interfere with the order of the trial court which has ineffect effaced an error committed by it.

With the above observation, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

To

The District Munsif,
Dharapuram.

C.R.P.No.1083 of 2018 and
C.M.P.No.5666 of 2018

nr (co)
rr ii (21/12/2020)