

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).3968 of 2015

and

MP.No. 1 of 2015

Mahalakshmi

... Petitioner

Vs.

1. Muthulakshmi

2. Guruvayurappan

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of CPC to set aside the order made in IA.No.122 of 2014 in OS.No.331 of 2012 dated 16.07.2015 on the file of the District Munsif, Pollachi, Coimbatore District.

For Petitioner : Mr.C.Veeraraghavan

For Respondents : No appearance

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ORDER

This Civil Revision Petition has been filed by the respondent/plaintiff against the order passed by the District Munsif, Pollachi in IA.No.122 of 2014 in OS.No.331 of 2012 dated 16.07.2015.

2. The respondents herein had filed an application in IA.No.122 of 2014 in OS.No.331 of 2012 on the file of the District Munsif, Pollachi under Section 5 of the Limitation Act to condone the delay of 437 days in filing the petition to set aside the exparte decree dated 21.09.2012. The learned District Munsif by the order dated 16.07.2015 had passed a Conditional Order as the said application will be allowed on payment of cost of Rs.2,000/- to the petitioner herein on or before 23.07.2015, failing which, the said application shall stand dismissed automatically and posted the said application on 24.07.2015 for further proceedings. Feeling aggrieved over the said order, the respondent/plaintiff has filed the present Civil Revision Petition.

3. When this matter came up for hearing on 09.11.2020, the learned counsel for the respondents reported no instructions and hence,

the Registry was directed to remove the name of the counsel for the respondents and to print the name of the respondents in the cause list and posted the matter on 18.11.2020. On 18.11.2020, the learned counsel for the petitioner has submitted that in view of the orders passed in IA.No.122 of 2014 in OS No.331 of 2012, the suit was restored to file, but, the said suit is still pending. Further, there was no representation for the respondents, on that date. The Registry has called for report from the District Munsif, Pollachi with regard to the Status of the suit in OS.No.313 of 2012. Accordingly, the learned District Munsif, Pollachi has sent a report vide letter dated 21.11.2020 stating that IA.No.122 of 2014 is still pending. Hence the matter was posted to 01.12.2020 for arguments. On 01.12.2020, there was no representation for the respondents. The learned counsel for the petitioner has partly argued and requested to post the matter on 04.12.2020. On 04.12.2020, there was no representation from both sides and hence, the matter was adjourned and posted to 18.12.2020 under the caption, “for dismissal”. On 18.12.2020, the learned counsel for the petitioner has appeared through Video Conferencing and made a request to remove the caption, “for dismissal” and also submitted that he is ready for arguments. Since there was no

representation for the respondents, on that date also, in order to give one opportunity to the respondents, the matter was adjourned and posted today for respondent's side arguments. Today (22.12.2020) also, no representation for the respondents. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed along with this petition, order is being passed in this petition.

4. The learned counsel for the petitioner has submitted that the petitioner has filed a suit in OS.No.331 of 2012 on the file of the District Munsif, Pollachi for the relief of permanent injunction to restrain the respondents herein from interfering with her peaceful possession and enjoyment of the suit "D" schedule property. He further submitted that in the said suit summons was duly served on the respondents herein, but, they did not appear before the trial court on the hearing date and hence they were set exparte and after taking evidence on the side of the petitioner herein, the learned District Munsif, Pollachi had passed an exparte decree on 21.09.2012. He further submitted that thereafter, the respondents herein have not obeyed the decree passed by the court and hence the petitioner herein had lodged a complaint before the Anaimalai

Police Station on 26.01.2013. He further submitted that based on the said complaint, the police summoned the second respondent herein and during enquiry in said complaint, the second respondent herein by the letter dated 29.01.2013 had stated that he will take steps to set aside the exparte decree and work out his remedy before the Civil Court and based on the said undertaking, the said complaint was closed, but, the respondents herein had continued their illegal activities and hence, the petitioner was forced to file an execution petition in EP.No.20 of 2013 and in the said execution petition, notice was sent to the respondents and only after receipt of the said notice in execution petition, the respondents had filed an application under Section 5 of Limitation Act to condone the delay of 437 days in filing the petition to set aside the exparte decree in IA.No.122 of 2014. He further submitted that during enquiry, the petitioner herein had produced the copy of the complaint lodged by the petitioner herein before the police and the undertaking given by the second respondent herein and the letter sent by the Sub Inspector of Police, Anamalai Police Station under the Right to Information Act and marked as Exs.R1 to R3 and prove the fact that though the respondents herein got knowledge about the exparte decree on 29.01.2013 itself, they

have not immediately filed the petition to set aside the exparte decree, on the contrary, they have filed the petition to set aside the exparte decree only on 02.01.2014 and without considering the said facts, the learned District Munsif has passed conditional order stating that the application will be allowed on payment of cost of Rs.2,000/-. He further submitted that the respondents after receipt of the suit summons willfully abstained from appearing before the court and even after giving undertaking before the police on 29.01.2013, they have not obeyed the decree and after waiting for one year they have filed a petition to set aside the exparte decree without assigning any valid reasons and therefore he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif, Pollachi in IA.No.122 of 2014 dated 16.07.2015 and dismiss the said application.

5. A perusal of the typed set of papers filed by the petitioner shows that the petitioner herein had filed a suit in O.S.No.331 of 2012 on the file of the District Munsif, Pollachi, to restrain the respondents from interfering with her peaceful possession and enjoyment of the suit 'D' Schedule properties by means of permanent injunction. In the said suit,

summons were served on the respondents herein but, they have not appeared before the trial Court on the hearing date and hence, they were set exparte and after taking evidence on the plaintiff's side, an exparte decree was passed on 21.09.2012.

6. The respondents herein had filed an application to set aside the said exparte decree on 02.01.2014 along with an application in I.A.No.122 of 2014 under Section 5 of the Limitation Act, to condone the delay of 437 days in filing the petition to set aside the exparte decree. In the affidavit filed in support of the said application, the respondents herein had stated that for the past 1½ years, the second respondent herein was suffering from jaundice and he was bed-ridden and the first respondent herein was looking after him and the second respondent herein took Ayurvedic treatment from Kerala. They have also stated that 10 days ago, they came to know that the petitioner herein had filed a suit in O.S.No.331 of 2012 and got an exparte decree on 21.09.2012 and on the basis of the said decree, the petitioner herein had filed an execution petition in E.P.No.20 of 2013 and hence, they filed a petition to set aside the exparte decree along with a petition to condone the delay of 437 days

in filing the said petition to set aside the exparte decree. In the said affidavit, they have not stated that the summons were not served on them in the suit. So, it has to be presumed that they had received summons in the suit but, they have not appeared before the Court either in person or through counsel. Though in the affidavit, they have stated that the second respondent herein was suffering from jaundice for the past 1½ years, they have not produced any materials to substantiate the said allegation.

7. It is to be pointed out that Ex.R1 shows that on 26.01.2013, the petitioner herein had lodged a complaint before the Sub-Inspector of Police, Anamalai Police Station stating that she got an injunction against the respondents herein but, without respecting the said injunction order they are giving troubles to her. A perusal of Ex.R2 shows that in the said complaint, the police conducted an enquiry and during enquiry, the second respondent herein appeared before the Sub-Inspector of Police, Anamalai Police Station on 29.01.2013 and gave a letter stating that he will take steps to set aside the exparte decree passed in the civil suit and workout his remedy in the said suit.

8. The said facts have not been denied by the respondents herein. So, it is clear that on 29.01.2013 itself, the respondents herein got knowledge about the exparte decree passed against them but, they have not immediately taken any steps to set aside the exparte decree. After waiting for nearly one year i.e., on 02.01.2014, they have filed an application to set aside the exparte decree along with delay excuse petition. Further, in the affidavit filed in support of the said application, they have stated that the second respondent herein was suffering from jaundice and that was the reason for not contesting the case, but Ex.R2 shows that on 29.01.2013 the second respondent herein appeared before the police station and that being so, the contention of the respondents that the second respondent was suffering from jaundice was the reason for not contesting the case cannot be accepted.

9. It appears that since the petitioner herein had filed an execution petition to arrest and detain the respondents herein in civil jail, in order to avoid the same, the respondents herein had filed an application to set aside the exparte decree with an inordinate delay of 437 days without assigning any valid reason. But without considering the said facts, the

learned District Munsif, had liberally approached the said application and passed an order that the said application would be allowed on payment of cost of Rs.2,000/-. The conduct of the respondents herein would show that they are not deserving for liberal construction of the expression 'sufficient cause' mentioned in the Section 5 of the Limitation Act. Therefore, this Court is of the view that the order passed by the learned District Munsif in I.A.No.122 of 2014 is liable to be set aside.

10. In the result, this Civil Revision Petition is allowed. No costs. The order passed by the learned District Munsif, Pollachi, in I.A.No.122 of 2014 in O.S.No.331 of 2012 dated 16.07.2015 is set aside and the said application is dismissed. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

22.12.2020

Vv/dna

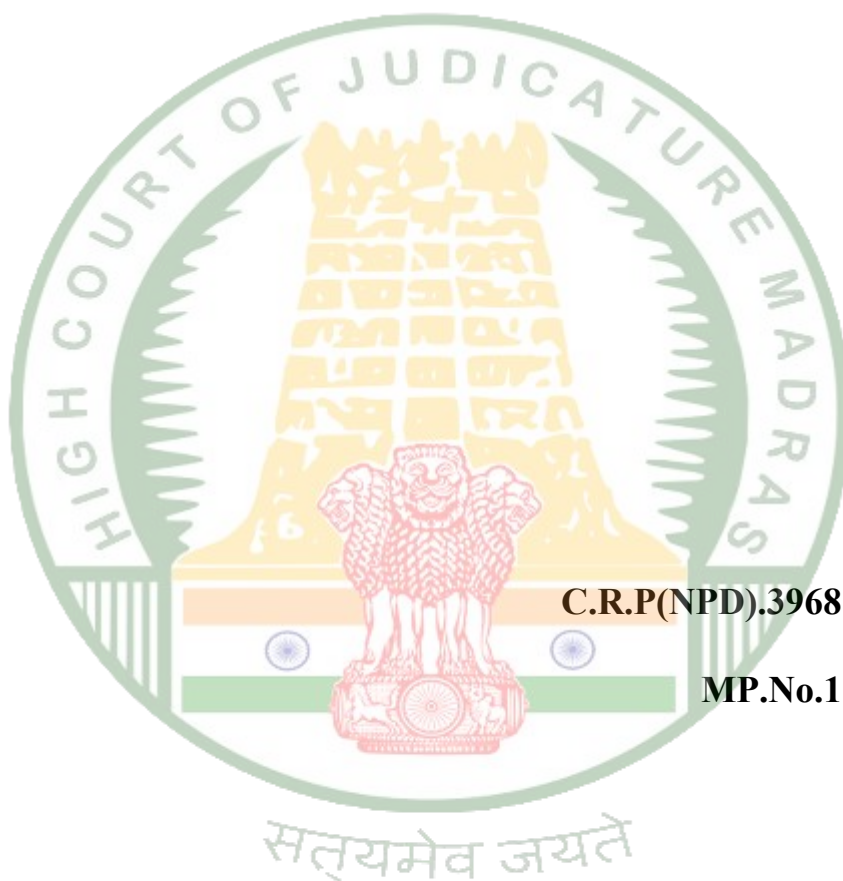
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Internet : Yes/No

To
The District Munsif,
Pollachi, Coimbatore District.

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P.RAJAMANICKAM.J.,

Vv



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