

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD). No. 4278 of 2012
and M.P. No. 1 of 2012

Srimushnam Sri Dharmalingam Veerasamy
Chettiar Educational Society
rep. by its Secretary N.V. Senthilnathan
77, South Car Street, Srimushnam. ... Petitioner

Vs

- 1.Govindarajan
 - 2.The State of Tamil Nadu,
rep. By its Secretary of Education,
Chennai.
 - 3.The Director of Elementary Education,
Chennai.
 - 4.The Chief Educational Officer,
Cuddalore District.
 - 5.The District Educational officer,
Elementary Education, Cuddalore.
 - 6.The Assistant Educational Officer,
Kattumannarkoil. ... Respondents
- (R2 to R6 not necessary party in this C.R.P.
and hence given up)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 18.09.2009 made in I.A. No. 55 of 2009 in O.S. No. 103 of 2001 on the file of the District Munsif cum Judicial Magistrate at Kattumannarkoil.

For Petitioner : Mr. Prabhu Mukuntharamkumar
for Mr. B. Rabu Manohar

For Respondents : Mrs. Selvi George (For R1)

Given up (For R2 to R6)

ORDER

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed against the order dated 18.09.2009 made in I.A. No. 55 of 2009 in O.S. No. 103 of 2001 on the file of the District Munsif cum Judicial Magistrate at Kattumannarkoil.

2. The petitioner is plaintiff, 1st respondent is the 6th defendant, respondents 2 to 6 are the defendants 1 to 5 in O.S. No. 103 of 2001 on the

file of the District Munsif cum Judicial Magistrate at Kattumannarkoil. The petitioner filed the said suit for declaration and permanent injunction. In the suit, the 1st respondent was set exparte on 06.10.2005. The suit was decreed on merits by the decree and judgment dated 25.04.2006. The 1st respondent filed I.A. No.55 of 2009 to condone the delay of 868 days in filing the petition to set aside the exparte decree. The petitioner and respondents 2 to 6 opposed the said I.A. The learned Judge allowed the said I.A. No. 55 of 2009 on condition that the 1st respondent pays a sum of Rs.2,000/- to the petitioner as cost.

3. Against the said order dated 18.09.2009 made in I.A. No. 55 of 2009 in O.S. No. 103 of 2001, the petitioner has come out with the present Civil Revision Petition.

4. Learned counsel appearing for the petitioner contended that the 1st respondent deliberately remained exparte only to drag on the suit. Earlier he was set exparte and exparte decree was passed on 06.02.2003. The 1st respondent filed A.S. No. 8 of 2003 against the said judgment and decree and

learned Sub Judge remanded O.S. No. 103 of 2001 to the Trial Court to give an opportunity to the 1st respondent to contest the suit on merits and directed the 1st respondent to cross-examine the petitioner's witness without any delay. Even after remand, the 1st respondent did not participate in the suit proceedings and again he was set exparte on 06.10.2005 and suit was decreed on 25.04.2006 on merits. The learned counsel appearing for the petitioner further submitted that the 1st respondent was hale and healthy and he was never hospitalized as alleged by him. The 1st respondent has participated in other proceedings in O.S. No. 59 of 2001 in the same Court. The learned Judge failed to see that the 1st respondent did not let in any evidence on his behalf even after the opportunity given to him. The learned Judge failed to see that the intention of the 1st respondent from the beginning was to delay the suit proceedings. The 1st respondent did not file any document to substantiate his case that he was suffering from heart ailment and that he shifted his residence to Chennai. The learned Judge failed to see that in the affidavit filed in support of the I.A. No. 55 of 2009 to condone the delay in filing the petition, the address given is only as 'Srimushnam' and not as Chennai. The learned Judge failed to see that even after two years of remand

by the learned Sub Judge in A.S. No. 8 of 2003, the 1st respondent did not let in any evidence and avail the opportunity given to him. The 1st respondent filed the petition to condone the delay only to drag on the proceedings and prevent the petitioner from enjoying the fruits of the decree and prayed for setting aside the order passed by the learned Judge and allowing the Civil Revision Petition.

5. Learned counsel appearing for the 1st respondent contended that the 1st respondent was contesting the suit. He was suffering from heart ailment and often he travels to Chennai for treatment. For convenient sake, he shifted his residence to Chennai and hence the letter written by his counsel did not reach him. Only when he came to attend the hearing of the suit in O.S. No.59 of 2001 which was pending in the same Court, he came to know about the exparte decree passed and immediately he filed the petition to set aside the exparte decree with present petition to condone the delay in filing the petition to set aside the exparte decree. The 1st respondent has given reason for condoning the delay. The learned Judge exercised his discretionary power and allowed the I.A. No. 55 of 2009 on terms. By allowing the petition, no

prejudice would be caused to the petitioner. The relief sought for by the petitioner is only subject to trial. The learned Judge has exercised discretionary power and unless it is shocking, this Court cannot interfere with the said order and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the 1st respondent and perused the materials available on record.

7. From the materials on record, it is seen that in the suit filed by the petitioner, the 1st respondent who is the 6th defendant did not contest the suit and he was set exparte. After full fledged trial, the suit was decreed by the judgment and decree dated 06.02.2003. On appeal in A.S.No.8 of 2003 by the 1st respondent, the suit was remanded to the Trial Court to give an opportunity to the 1st respondent to contest the suit on merits. From the order of the learned Judge, it is seen that the 1st respondent did not let in any evidence after remand. The fact remains that the suit was adjourned from time and again and the suit was posted for arguments on 10.12.2003. At this stage, the 1st respondent filed two petitions in I.A. Nos.484 and 485 of 2003 to reopen

the case, to enable him to adduce the evidence. Both the petitions were allowed and counsel for the 1st respondent cross-examined P.W.1 on more than five occasions. Subsequently, the 1st respondent filed Transfer O.P. No. 24 of 2004 and it was dismissed on merits. Subsequently, the suit was posted for evidence of the 1st respondent on 20.09.2005. Even then, the 1st respondent has not let in any evidence and he was set exparte on 06.10.2005 and decree was passed on merits on 25.04.2006.

8. In the present case, I.A. No.55 of 2009 has been filed by the 1st respondent to condone the delay in filing the petition to set aside the exparte decree stating that due to heart problem, he has shifted his residence to Chennai for convenience sake, but the 1st respondent has not stated when he shifted his residence to Chennai. According to the 1st respondent, due to shifting of his residence to Chennai, he did not receive the letter written by his counsel. The 1st respondent has stated that when he went to attend the hearing in O.S. No. 59 of 2001, in the same Court, he came to know about the exparte order passed against him in the present suit. The 1st respondent has not stated as to when he received communication with regard to hearing of

O.S. No.59 of 2001. The 1st respondent also has not stated when he came back from Chennai, as in the affidavit filed in support of the petition to condone the delay, he has given his address as Srimushnam only. It is no doubt true that the petition to condone the delay must be considered liberally on merits and parties should not be shut down at the threshold itself. But the intention of the parties must be bonafide and reason given by them must be sufficient and acceptable one.

9. In the present case, earlier the 1st respondent was set exparte on 06.02.2003. On appeal in A.S. No.8 of 2003, suit was remanded and even after remand by the Appellate Court, again the 1st respondent did not participate in the hearing and did not let in any evidence. When the suit was posted for arguments on this petition, the suit was reopened and P.W.1 was recalled. After cross-examining P.W.1, the 1st respondent did not let in any evidence on his behalf and did not participate in further proceedings. The learned Judge after recording the fact about the attitude of the 1st respondent, erred in allowing the I.A. on the ground that the petition for condone delay must be considered liberally. The learned Judge did not properly appreciate

the judgment relied on and erroneously allowed the I.A. filed by the 1st respondent. The learned Judge has not exercised his discretion while deciding the petition for condoning the delay. The learned Judge has not properly appreciated the materials on record and erroneously allowed the I.A. From the materials on record and from the impugned order, it is clear that the intention of the 1st respondent is not bonafide and his intention is only to drag on the proceedings. The 1st respondent has not given any sufficient, valid and acceptable reason and failed to give any reason for condoning the delay. In view of the above, I hold that the order of the learned Judge is erroneous, perverse and is liable to be set aside and order in I.A. No.55 of 2009 is hereby set aside and I.A.No.55 of 2009 is dismissed.

10. In the result, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

gsa
Index: Yes/No

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V.M.VELUMANI,J.

gsa

To

The District Munsif cum Judicial Magistrate,
Kattumannarkoil.



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