

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.589 of 2017
& C.M.P.No.2984 of 2017

T.K.Shanthi

.. Petitioner/Plaintiff

Vs.

1.Devamala

2.Mani @ Balasubramanian

.. Respondents/Defendants

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 18.01.2017 made in I.A.No.894 of 2015 in O.S.No.343 of 2010 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.E.J.Ayyappan

For Respondents : Mr.R.Nalliyappan

ORDER

(The matter is heard through “Video-Conferencing”)

The Civil Revision Petition is filed against the fair and decretal order dated 18.01.2017 made in I.A.No.894 of 2015 in O.S.No.343 of 2010 on the file of the Principal District Munsif Court, Salem.

2.The petitioner is the plaintiff and the respondents are the defendants in O.S.No.343 of 2010 on the file of the Principal District Munsif Court, Salem. The petitioner filed the said suit for permanent injunction and mandatory injunction. The respondents filed written statement on 04.01.2011 but did not contest, when the suit was taken up for trial. An exparte decree was passed on 27.07.2011. The respondents filed I.A.No.894 of 2015 to condone the delay of 926 days in filing the petition to set aside the exparte decree dated 27.07.2011. According to the respondents, the 2nd respondent's mother who was in Chennai was ill for almost two years and the respondents were attending her and hence, they could not contact their advocate and get instructions. On

24.01.2014, the mother of the 2nd respondent died and the respondents came to their native place at Yercaud. They met their advocate and came to know that exparte decree was passed as they did not appear before the Court. Immediately, the respondents filed the petition.

3.The petitioner filed counter affidavit and opposed the said petition.

4.Before the learned Judge, the 2nd respondent examined himself as P.W.1 and marked three documents as Exs.P1 to P3. The petitioner examined herself as R.W.1 and marked six documents as Exs.R1 to R6.

5. The learned Judge allowed the petition filed by the respondents on the ground that the petitioner, who is the plaintiff has not approached the Court with correct facts and allowed the petition filed by the respondents on payment of cost of Rs.2,000/-.

6. Against the said order dated 18.01.2017 made in I.A.No.894 of 2015 in O.S.No.343 of 2010, the present Civil Revision Petition is filed by the petitioners.

7. The learned counsel appearing for the petitioner submitted that the respondents have not given any valid or acceptable reason for condoning the huge delay of 926 days. The learned Judge erroneously condoned the delay considering the averments made in the plaint and the learned Judge ought not to have recorded the evidence based on merits of the case. The learned Judge ought to have confined to the issue of condoning the delay while deciding the petition. The learned Judge failed to consider the evidence and the documents marked by the petitioner as Exs.R1 to R6, which reveal that the respondents were put on notice on 21.12.2012 itself about the exparte decree by Ex.R1, which was received by the 1st respondent as per Ex.R2. The 2nd respondent in his cross-examination has admitted the receipt of notice dated 21.12.2012 by his wife, the 1st respondent herein. The respondents have not given any

reason for not taking steps immediately to set aside the exparte decree. The reasons given by the petitioner are false. The learned Judge without considering the averments made in the affidavit, counter affidavit and documents filed and marked, erroneously allowed the petition based on the averments made in the plaint and decided the issue in the suit and prayed for allowing the Civil Revision Petition.

8.Mr.R.Nalliyappan, learned counsel appearing for the respondents submitted that the respondents have filed written statement on merits and were contesting the suit. Due to illness of the mother of the 2nd respondent, the respondents could not appear when the suit was taken up for trial. The respondents, after death of mother of the 2nd respondent and after coming to know about the exparte decree, immediately filed petition to condone the delay in filing the petition to set aside the exparte decree. The respondents have given proper and valid reason for condoning the delay. The learned Judge has given proper reason for condoning the delay and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel appearing on behalf of the petitioner as well as the respondents and perused the entire materials available on record.

10. From the materials available on record, it is seen that an exparte decree was passed against the respondents on 27.07.2011. The respondents have filed application in I.A.No.894 of 2016 to condone the delay of 926 days in filing the petition to set aside the exparte decree on 04.03.2014. In the affidavit filed in the said petition, the respondents have stated that they came to know about the exparte decree only in the year 2014 after returning from Chennai. The said averments proved to be wrong by the petitioner. The petitioner has produced Ex.R1 notice dated 21.12.2012 issued to the respondents through her counsel informing about the exparte decree. The petitioner also filed Ex.R2 acknowledgment card received by the 1st respondent. The 2nd respondent in his cross-examination admitted the receipt of the said notice. In spite of knowing the exparte decree in the year 2012 itself, the respondents

filed petition only in March 2014. The respondents have not given reason for not filing the petition immediately when they received notice in December 2012. The respondents have stated that due to health problem of mother of the 2nd respondent, they were held up in Chennai. The respondents have not produced any materials when the 2nd respondent was examined as P.W.1 or the health problem of his mother at Chennai. Further, the death certificate of mother of the 2nd respondent produced by the respondents marked as Ex.P1 shows that mother of the 2nd respondent died at Yercaud. The learned Judge has failed to consider that the respondents were aware of the exparte decree in December 2012 itself and have not given reason for not approaching the Court immediately to set aside the exparte decree. It is no doubt true that a petition to condone the delay must be considered liberally and the parties must be given an opportunity to put forth their case. At the same time, only when the party gives valid and acceptable reason, the delay can be condoned.

11. In the present case, the respondents have not given any reason for the delay from December 2012 to March 2014. In view of the above reason, the order of the learned Judge is erroneous, suffers from perversity and is liable to be set aside and it is hereby set aside.

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

08.09.2020

Index : Yes/No
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To

The Principal District Munsif
Salem.

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V.M.VELUMANI, J.

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