



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2020

CORAM

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THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.673 of 2020

1.Sugapriya

2.Arumugathai : Petitioners/Petitioners/Defendants 2 & 3

.. Vs ..

Kalaiselvi : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order passed by the learned Additional District Munsif-cum-Judicial Magistrate, Sivagiri in I.A.No.100 of 2018 in O.S.No.82 of 2015, dated 11.03.2020.

For Petitioners :Mr.M.Jothi Basu

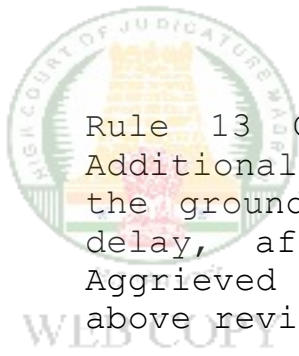
ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional District Munsif-cum-Judicial Magistrate, Sivagiri in I.A.No.100 of 2018 in O.S.No.82 of 2015, dated 11.03.2020.

2.Heard the learned Counsel appearing for the petitioners.

3.The respondent in this revision petition filed the suit in O.S.No.82 of 2015 on the file of the Additional District Munsif-cum-Judicial Magistrate Court, Sivagiri for a declaration that she is also the legal heir of one deceased Ayyasamy along with defendants 1 and 2. The said suit was filed on 09.06.2015. It is admitted that the defendants 1 to 3 were set *ex parte* on 09.07.2015 and an *ex parte* decree was passed on 27.01.2016.

4.Thereafter, the petitioners filed two interlocutory applications, in I.A.No.100 of 2018 to condone the delay of 513 days in filing a petition to set aside the *ex parte* decree and in I.A.No.101 of 2018 to set aside the *ex parte* decree under Order IX

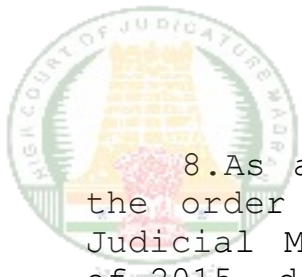


Rule 13 CPC. Both petitions were dismissed by the learned Additional District Munsif-cum-Judicial Magistrate, Sivagiri, on the ground that the revision petitioners have not explained the delay, after they had knowledge about the *ex parte* decree. Aggrieved by the same, the defendants 2 and 3 have preferred the above revision petition.

5.The learned Counsel for the revision petitioners submitted that the lower Court has failed to see that the petitioners have taken earnest steps to defend the case and that due to physical illness and other financial constraints, steps have not been taken within the time. The learned Counsel further submitted that the second petitioner sustained injury in an accident and that she was taking treatment in a hospital. He also stated that the suit itself was filed for a declaration that the plaintiff is a legal heir of the deceased Ayyasamy, who met with an accident and succumbed to death. It is further pointed out that the petitioners have filed a Motor Claim Original Petition seeking compensation and that the suit was filed only after the petition for compensation was presented before the Court. The learned Counsel then submitted that some indulgence should be given to the petitioners in this matter to condone the delay.

6.None of the submissions of the learned Counsel for the petitioners can be legally sustained, having regard to the admitted facts. The petitioners themselves admitted in their affidavit that the 3rd defendant/2nd petitioner did not meet their Counsel on 09.07.2015 and that the defendants 1 and 2 were set *ex parte* on 09.07.2015. It is further admitted that defendants filed petition to set aside the *ex parte* order on 24.07.2016. Further it is admitted by the petitioners that on 07.08.2016, they met their Counsel and that they got information from the Counsel about the *ex parte* decree, that was passed on 27.01.2016. However, the affidavit filed in support of the petition to condone the delay does not disclose any other reasons for the delay, after the petitioners came to know about the *ex parte* decree on 07.08.2015.

7.Though the petition was filed to condone the delay of 163 days, the delay was 513 days in filing the petition to set aside the *ex parte* decree. In the absence of any explanation for the delay, the Court is not expected to condone the delay on assumption that the petitioners might have some valid reasons for the delay. The facts are not in dispute and the petitioners' affidavit does not show any valid reasons for the delay of more than one and half years. Having regard to the nature of suit, this Court is of the view that the present petition is to drag on the proceedings. Hence, this Court is not inclined to entertain this revision petition.



8.As a result, this Civil Revision Petition is dismissed and the order passed by the learned Additional District Munsif-cum-Judicial Magistrate, Sivagiri in I.A.No.100 of 2018 in O.S.No.82 of 2015, dated 11.03.2020, is confirmed. No costs.

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Sd/-

Assistant Registrar(Records)

// True Copy //

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Sub Assistant Registrar(CS)

cmr

To

1.The Additional District Munsif-cum-Judicial Magistrate,
Sivagiri.

+1 CC to M/s.M. JOTHI BASU, Advocate (SR-17340[F] dated
18/09/2020)

C.R.P. (NPD) (MD) No. 673 of 2020
17.09.2020

SCR(CO)

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