



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2020

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.1422 of 2019

and

C.M.P. (MD)No.7569 of 2019

B.Seethalakshmi

.. Petitioner /Petitioner/1st Defendant

Vs.

1.A.Chockalingam (died)

2.L.Palaniappan

3.C.Meenakshi

4.Valliyammal (Died)

5.Shenbagavalli

6.C.Arasappan

.. Respondents

(Respondents 3 to 6 are brought on record
as legal heirs of deceased R1 vide Court order
dated 03.09.2019 made in C.M.P. (MD)No.7972 of 2019
in C.R.P. (MD)No.1422 of 2019 by KRJ)
(Memo presented in Court and recorded as R4 namely
Valliyammal vide Court order dated 19.09.2019 by KRJ)

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order made in I.A.No.1292 of 2016 in O.S.No.568 of 2012 dated 30.04.2019 on the file of the learned II Additional Subordinate Judge, Tiruchirappalli.

For Petitioner

: Mr.N.Anandakumar

For Respondents

: Mrs.S.Vijayashanthi

ORDER

Heard the learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.1292 of 2016 in O.S.No.568 of 2012 dated 30.04.2019 on the file of the learned II Additional Subordinate Judge, Tiruchirappalli.

3.The petitioner herein is the first defendant, the first respondent herein is the plaintiff and the second respondent



herein is the second defendant in the suit. The first respondent herein has filed a suit in O.S.No.568 of 2012 for recovery of money. In that suit, the petitioner herein has filed an application in I.A.No.1292 of 2016 under Section 5 of Limitation Act to condone the delay of 942 days in filing the petition to set aside the exparte order dated 06.02.2014. That petition was dismissed by the trial Court. Against which, the petitioner has filed the present petition.

4.The brief substance in the petition I.A.No.1292 of 2016 is as follows:

The second defendant was looking after the proceedings of the case on behalf of the first defendant and the second defendant failed to inform the stage of the case to the first defendant. Due to the ill health of the first defendant, he could not contact the Advocate, when the suit was posted for filing written statement. There was a delay of 942 days to take steps to set aside the exparte decree and the same is to be condoned.

5.The brief substance of counter filed in I.A.No.1292 of 2016 is as follows:

The petitioner has not produced any proof regarding his ill health. There is no reason sufficient enough to file the petition to set aside the decree.

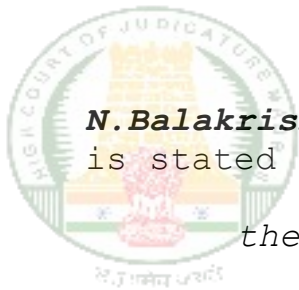
6.The trial Court after considering both the sides, dismissed the petition. Against which, the petitioner has filed this revision petition.

7.On the side of the petitioner, it is stated that the suit is for recovery of money. The defendants obtained loan from Adaikkammai and he set up the first respondent and filed the suit. The dwelling house of the petitioner is attached and the petitioner never borrowed money from the defendants. Only due to ill health of the petitioner, there was a delay of 942 days. The first respondent is totally a stranger to the petitioner and the rights of the petitioner is affected.

8.The learned counsel for the petitioner relied on the judgment passed by this Court in the case of **Karuppiah v. Ramavelar** in **2019 (1) TLNJ 47 (Civil)**, wherein it is stated as follows:

"inordinate delay of 543 days unexplained - on the settled legal position that merits of the matter should be looked instead throwing it on the aspect of delay, order of trial Court set aside"

9.The learned counsel for the petitioner relied on the judgment passed by the Hon'ble Supreme Court in the case of



N.Balakrishnan v. M.Krishnamurthy in **1999 1 L.W. 739**, wherein it is stated as follows:

"Rules of limitation are not meant to destroy the rights of parties"

10.On the side of the respondents, it is stated that the delay is not explained and no document is filed to prove the ill health of the petitioner. There is a delay of three years. The version of the petitioner in the delay excuse petition and in the written statement proposed to be filed with the delay excuse petition are different. There is no reason for the absence of the second defendant. E.P. Notice was served on the petitioner on 20.08.2015. The petitioner made his appearance in the E.P. proceedings on 10.09.2015 through his counsel. But, only on 07.09.2016, the delay excuse petition was filed and hence, the claim of the petitioner is not maintainable.

11.The learned counsel for the respondents relied on the judgment passed by this Court in the case of **K.Rajamanickam and another v. S.Valli** reported in **2013 (3) MWN (Civil) 254**, which reads as follows:

"In such circumstances, dismissal of application to set aside ex parte decree by trial Court on ground that appellants were not prevented by reasonable cause from appearing in suit proceedings, justified and not interfered with."

12.The learned counsel for the respondents relied on the judgment passed by this Court in the case of **Emm Emm Container Services and others v. Comala Gopinath and others** reported in **2014 (6) CTC 786**, which reads as follows:

"Appeal dismissed with exemplary Costs of Rs.50,000/- - time to vacate granted, subject to filing of affidavit of undertaking - civil miscellaneous appeal dismissed."

13.On the side of the petitioner, it is stated that additional documents are to be filed and facts of the case is to be considered by the Court and the rights of the petitioner should not be curtailed and she is to be heard.

14.It is seen that the suit was filed in the year 2012 itself. The petitioner and the second defendant made their appearance through their counsel and later they failed to file written statement and were set exparte. The claim of the petitioner is that he borrowed some money from somebody else not from the first respondent. The cause of delay is that the second defendant failed to follow the case. Why the second defendant



failed to follow the proceedings is not stated in the petition. Another reason stated by the petitioner is that the petitioner was suffering from ill health and was not able to contact the advocate. What was the physical ailment and what was the treatment undertaken by the petitioner and how long the treatment was going on were not stated by the petitioner. Each day delay is to be explained. It is seen that the dwelling house of the petitioner is attached by the trial Court in the E.P. Proceedings and that the petitioner made his appearance through his advocate on 10.09.2015 itself. This petition was filed only on 07.09.2016, after the lapse of one year, which clearly reveals that the reasons stated by the petitioner is not *bonafide*.

15.Each day delay is not properly explained by the petitioner. There is no reason sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is dismissed and the order passed in I.A.No.1292 of 2016 in O.S.No.568 of 2012 dated 30.04.2019 on the file of the learned II Additional Subordinate Judge, Tiruchirappalli is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The II Additional Subordinate Judge, Tiruchirappalli.

+1 CC to MRS.S.VIJAYASHANTHI, Advocate (SR-5178[F] dated 07/02/2020)

C.R.P. (PD) (MD) No.1422 of 2019

06.02.2020

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