



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.06.2020

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CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P(MD) No.1793 of 2019
and
C.M.P(MD)No.9235 of 2019

Minor Srinivasa Perumal
Rep. Through his Father and Natural Guardian,
Sivaraman ... Petitioner/Respondent/Plaintiff

Vs.

S.Rasu ... Respondent/Respondent/Defendant

PRAYER: The Civil Revision Petition is filed under Section 115 of C.P.C to set aside the fair and decreetal order dated 05.08.2019 in I.A.No.278 of 2018 in O.S.No.73 of 2015 made on the file of the District Munsif Court, Nilakottai.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.P.T.Narendravasan for
Mr.M.V.Venkataseshan

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 05.08.2019 in I.A.No.278 of 2018 in O.S.No.73 of 2015 made on the file of the District Munsif Court, Nilakottai.

2.The petitioner has filed a suit in O.S.No. 73 of 2015 on the file of the District Munsif, Nilakottai. The respondent is the defendant. In the said suit, an ex-parte decree was passed on 03.02.2016. The respondent herein filed an application before the trial court in I.A.No.278 of 2018 to condone the delay of 763 days in filing the petition to set aside the ex-parte decree. The said



petition was allowed and the delay was condoned on payment of cost of Rs.1500/-.

3. Challenging the said order, the respondent/plaintiff has filed the present revision before this Court.

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4. The learned counsel for the petitioner would submit that the respondent has not stated any valid reason to condone the delay in filing the petition to set aside the ex-parte decree and each and every day delay has not been explained. Though the respondent has stated that due to illness the delay has occurred, he has not filed any proof for his illness. The learned District Munsif, Nilakottai failed to consider the same and took sympathetic view. While allowing the petition, a meagre amount of Rs.1500/- has been imposed and he refused to receive the money and filed the present revision.

5. The learned counsel for the respondent would submit that even though the petitioner/plaintiff has no case, by taking advantage of the ex-parte decree, he tried to put up construction and since the respondent was ill, he could not appear before the trial court and the trial court has considered the reasons stated in the affidavit and also citations of this Court and allowed the petition. The trial court has exercised its discretion and there is no arbitrariness in it. There is no merit in this revision and the same is liable to be dismissed.

6. Heard both sides and perused the records.

7. It is noted that the petitioner has filed the suit in O.S.No.73 of 2005 for bare injunction in which the respondent was shown as the defendant. Since the defendant did not appear before the trial court, an ex-parte decree was passed on 03.02.2016. The petitioner ought to have filed a petition to set aside the ex-parte decree within a period of 30 days. But the petitioner has failed to file an application to set aside the ex-parte decree within a period of 30 days. Therefore, he has filed an application to condone the delay of 763 days in filing the petition to set aside the ex-parte decree. Though the respondent has stated that non-appearance before the court is neither willful nor wanton, he has not properly explained the reason for the delay. However, the court has considered and satisfied with the reasons stated for non-appearance of the defendant and allowed the petition.

8. On a reading of the entire materials, this Court finds no reason to interfere with the order of the trial court. However the cost imposed by the trial court is increased to Rs.25,000/- (Rupees twenty five thousand only). The respondent herein is directed to pay a sum of Rs.25,000/- less Rs.1500/- which was already deposited by the respondent to the petitioner. The petitioner is permitted to withdraw a sum of Rs.1500/-, which was already deposited by the



9. With the above modification, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AD-II)

/ /2020

Sub Assistant Registrar(CS)

To

The District Munsif Court,
Nilakottai.

C.R.P(MD) No.1783 of 2019
and C.M.P(MD)No.9235 of 2019
05.06.2020

SDS (18.06.2020) 3P-2C