



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) No.1992 of 2019
and
C.M.P. (MD) No.10257 of 2019

1.A.Mokkaiyan

2.Vanathandi .. Petitioners/Petitioners 1&2/Defendants 1&2

Vs.

1.Ramakkal

2.Subbammal .. Respondents/Respondents 1&2/Plaintiffs 1&2

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned District Munsif, Periyakulam dated 17.10.2019 in I.A.No.156 of 2019 in O.S.No.117 of 2015.

For Petitioner

: Mr.R.Raja Mohan

For Respondents

: Mr.E.Pandiarajan
for M/s.Dhana Law Associates

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.156 of 2019 in O.S.No.117 of 2015 dated 17.10.2019, on the file of the District Munsif Court, Periyakulam.

3.The petitioners herein are the defendants and the respondents herein are the plaintiffs 1 and 2 in the suit. The respondents herein have filed a suit in O.S.No.117 of 2015 for a prayer of bare injunction. The defendants were set exparte on 27.06.2016. The petitioners have filed a petition in I.A.NO.156 of 2019 to set aside the exparte order.



4.The brief substance of the application in I.A.No.156 of 2019 is as follows:

The first petitioner is representing the second petitioner also. Due to diabetes, the first petitioner was not able to meet the advocate and to file the written statement in time and the petitioners were set exparte and the case is posted for judgment. Exparte order is to be set aside.

5.The brief substance of the counter in I.A.No.156 of 2019 is as follows:

After receiving summons, the petitioners appeared through counsel. Even after sufficient opportunity were given, the petitioners failed to file the written statement in time. Only after three years, the petitioners were set exparte.

6.The trial Court after hearing both side, dismissed the petition. Against which, the revision petitioners have come forward with this petition.

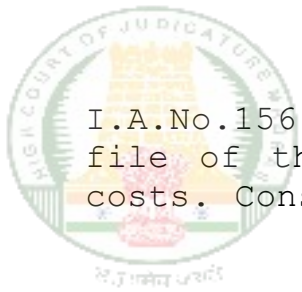
7.On the side of the revision petitioners, it is stated that only due to jaundice, the petitioners were not able to file the written statement in time.

8.On the side of the respondents, it is stated that the disease was not proved by the petitioners. Even if the second petitioner was affected by jaundice, the first petitioner might met the Advocate and filed the written statement in time and how the petitioners came to know that the case was posted for judgment is not stated in the petition. Only with an intention to drag on the case, the petitioners failed to file written statement in time.

9.It is further stated that though exparte order was passed on 27.06.2016, the respondents failed to take evidence and the case was posted for recording exparte evidence on 08.08.2016 and the case was dismissed for default on that date and the case was restored only on 26.06.2018, after two years. But the trial Court failed to consider the delay of two years due to the default of the plaintiff and the Court came to a conclusion that the petitioners approached the Court after a delay of three years.

10.The suit is only for bare injunction not for declaration. It is seen that the exparte order was passed on 27.06.2016 and the suit was dismissed for default on 08.08.2016 and the same was restored only on 26.06.2018.

11.For the above reasons, an opportunity for the petitioners to put forth their case is to be given. Hence, this Civil Revision petition is allowed and the order passed in



I.A.No.156 of 2019 in O.S.No.117 of 2015 dated 17.10.2019, on the file of the District Munsif Court, Periyakulam is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The District Munsif, Periyakulam.

+1 CC to MR.R.RAJAMOHAN, Advocate (SR-5470[F] dated 10/02/2020)

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