

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

C O R A M

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P(NPD)No.317 of 2015

and

M.P.No.1 of 2015

1.C.Ganesan

2.G.Marayee @ Chellayee

... Petitioners

Vs.

1.Muthusamy

2.Chandra

3.Radhakrishnan

... Respondents

Prayer: Civil Revision Petition is filed under Article 115 of the Civil Procedure Code, to set aside the fair and decretal order in I.A.No.359 of 2014 in O.S.No.212 of 2010 dated 07.10.2014 on the file of the Principal District Munsif, Rasipuram, and thereby allow the Civil Revision Petition.

For Petitioners : Mr.N.Suresh

For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 07.10.2014 passed in I.A.No.359 of 2014 in O.S.No.212 of 2010 on the file of the Principal District Munsif, Rasipuram, thereby allowing the petition for 138 days in filing the petition to set aside the ex-parte decree dated 30.10.2013.

2. The petitioners are the plaintiffs and the respondents are the defendants in the suit filed by the petitioners for declaration and the mandatory injunction and the suit was posted for trial. The respondents failed to appear before the trial Court and as such they were set ex-parte and an ex-parte decree was passed on 30.10.2013.

3. Though notice was served on the respondents and the names of the respondents are printed in the cause list, none appeared on behalf of the respondents before this Court in person or through pleader.

4. On a perusal of the affidavit in support of the condone delay petition, it is seen that the 1st petitioner mother was fell ill and as such, she was

continuously given treatment by the 1st respondent herein. When the matter was posted for trial and listed in the special list, the respondents failed to appear and as such they were set ex-parte. Further, it is stated that in the month of January 2014, the mother of the 1st petitioner died and as such he would not able to contact his counsel and only thereafter, he came to understand that they were set ex-parte.

5. The learned counsel appearing for the petitioner pointed out that the 1st petitioner filed a complaint as against the respondents 1 and 2 herein in C.C.No.137 of 2012 on the file of Judicial Magistrate, Rasipuram, in which they were all along appeared on 11.09.2013, 18.09.2013, 27.09.2013, 11.10.2013, 22.10.2013, 25.11.2013, 20.12.2013, 03.02.2013, 04.02.2014, 05.02.2014, 11.02.2014 and 20.02.2014. Both the Courts i.e. Principal District Munsif, Rasipuram and Judicial Magistrate, Rasipuram, are situated in one and the same campus. Further, the mother of the 1st respondent died only in the month of January 2014. Even after the death of their mother, they appeared before the trial Court and the dairy extract of the Judicial Magistrate Court marked as Ex.D.1. Even then the Court below allowed the petition to condone the delay. He further submitted that the respondents stated false reasons in the affidavit and it would be entertained in any Court of law. They approached the

with incorrect facts and hence, the petition seeking to condone the delay ought to have been dismissed with costs.

6. In support of his contention, he relied upon the judgment reported in **(2019) 11 SCC 384 [MOHD SAHID AND OTHERS Vs. RAZIYA KHANAM (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS]**

“19. The order-sheet and other materials placed on record clearly show that the appellants had full knowledge about the proceedings of Original Suit No.591 of 1979 and also about the disposal of Writ Petition (C) No.19550 of 1985 and the appellants have filed application for condonation of delay with incorrect facts. Both the first appellate court and the High Court recorded concurrent findings that the appellants have filed the application for condonation of delay with incorrect facts and were negligent in pursuing the matter and rightly refused to condone the delay. We do not find any perversity or infirmity in the impugned order warranting interference and the appeal is liable to be dismissed.”

7. The Hon'ble Supreme Court of India held that when the party had full knowledge about the proceedings of the suit and if they come forward with incorrect facts to condone the delay, the same could not be entertained. In the

case on hand, as per Ex.D1., the respondents 1 and 2 appeared before the learned Judicial Magistrate Court, Rasipuram, in C.C.No.137 of 2012 on various hearings and even after the death of the mother of the 1st respondent herein. Whereas in the affidavit they falsely averred that he looked after the mother in the year 2013 and thereafter in the month of January 2014 she died. Therefore, the above judgment relied on by the learned counsel for the petitioner is squarely applicable to the present case.

8. In view of the above discussions, the Civil Revision Petition is allowed and the order dated 07.10.2014 in I.A.No.359 of 2014 in O.S.No.212 of 2010 on the file of the Principal District Munsif, Rasipuram, is set aside. No order as to costs. Consequently, connected miscellaneous petition is closed.

10.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

G.K.ILANTHIRAIYAN, J.

bri

To

The Principal District Munsif,
Rasipuram.



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