

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.1906 of 2018

and

CMP.No.11041 of 2018

Kaliaperumal
S/o. Periyaswamy

..Petitioner

Vs.

Kalaiselvi
W/o. Subramanian

..Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decretal order dated 20.03.2018 made in I.A.No.425 of 2017 in O.S.No.583 of 2000 on the file of the District Munsif cum Judicial Magistrate, Kattumannar Koil.

For Petitioner : Mr.G.Surya Narayanan
For Respondent : Mr.J.Ramakrishnan

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 20.03.2018 made in I.A.No.425 of 2017 in O.S.No.583 of 2000 on the file of the District Munsif cum Judicial Magistrate,

Kattumannar Koil, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The petitioner is the plaintiff and the respondent is the defendant in the suit. The petitioner herein filed a suit for declaration and injunction in respect of the suit property. The respondent did not appear before the trial Court as such he was set ex-parte by the judgment and decree dated 30.12.2002. Immediately, on coming to know about the ex-parte decree, the respondent filed a petition for setting aside the ex-parte decree with the delay of 4805 days and the same was allowed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that the respondent did not state any sufficient reasons to condone the delay of huge number of days i.e., 4805 days in filing the petition to set aside the ex-parte decree. He further submitted that the respondent engaged a counsel in the suit and also filed a written statement. Thereafter, he did not even enquire his counsel about the pendency of the suit for the past 15 years. The respondent failed to state any single reason for his absence before the trial

Court and also failed to enquire his counsel on record about the pendency of the suit. Without considering same, the Court below mechanically allowed the petition for condoning the delay of 4805 days in setting aside the ex-parte decree. In support of his contention, he relied on the Judgment reported in **2007 2 CTC 643** in the case of **G.Jayaraman Vs. Devarajan**.

4. Per contra, learned counsel for the respondent submitted that the original petitioner filed a suit for declaration and permanent injunction in respect of the suit property before the District Munsif, Viruthachalam in O.S.No.77 of 1996. After receipt of summons in the said suit, the respondent appeared through his counsel and also filed his written statement. Thereafter, due to the administrative reasons, the suit was transferred to the file of the District Munsif, Kattumannarkoil on 11.07.2000. Thereafter, no notice was served to the respondent and only on paper publication, he was set ex-parte and an ex-parte decree was passed against him. That apart, though the respondent filed a written statement, the trial Court without even framing any issues, mechanically allowed the petition and passed the judgment not in consonance with Order 20 Rule 4 of CPC. Therefore, the ex-parte judgment passed by the court below is not a

judgment in the eye of law and explicitly illegal. Therefore, the Court below rightly allowed the petition and had given one more opportunity to the respondent to defend the suit.

5. Heard both sides.

6. The petitioner is the plaintiff and the respondent is the defendant in the suit. The petitioner filed a suit for declaration and injunction in respect of the suit property in O.S.No.77 of 1996 on the file of the District Munsif, Viruthachalam. On receipt of summons in the said suit, the respondent filed a written statement. Thereafter, due to the administrative reasons, the suit was transferred to the file of the District Munsif, Kattumannarkoil on 11.07.2000. Though notice was sent to the respondent, it was not properly served. As such the petition was ordered. Accordingly, after effecting paper publication, the respondent was set ex-parte by the decree and judgment dated 30.12.2002.

7. On a perusal of the ex-parte judgment reveals that it was not satisfactory and unreasonable to the judgment. As a fact, it is illegal. When

the respondent filed his written statement, the Court below ought to have framed the issues and the points for determination to be determined by the Court below while passing the judgment. The Order 20 Rule 4 of CPC would clearly state that the judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. The impugned judgment does not reflect the issue involved in the present case. The suit is filed for declaration and injunction. Therefore, the Court below has to definitely consider the fact as to whether the petitioner is entitled for the relief of declaration and injunction in respect of the suit property.

8. The learned counsel for the petitioner had relied on the following judgment reported in **2007 2 CTC 643** in the case of **G.Jayaraman Vs. Devarajan**, which reads as follows:

9. Of course, it is the consistent view taken by the Supreme Court in various decisions that "sufficient cause" appearing in Section 5 of the Limitation Act should be liberally considered and the Court should be slow in shutting the door of justice to a litigant on the score of limitation. When the reason for the delay is properly explained, the Court is to adopt a pragmatic

approach to condone the delay when there is no negligence, inaction or want of bonafide on the part of the Applicant.....

13. Deprecating the practice of setting aside the exparte decrees in casual manner, in the decision reported in Srinivasalu ..Vs.. Krishnammal (100 L.W. 666), Chief Justice M.N.Chandurkar, J., has held as under:-

"...The present order allowing the petition for condonation of delay in filing the Petition for setting aside the exparte decree appears to be obviously the result of a very liberal attitude and casual manner in which exparte decrees are being set aside. I had two occasions earlier to refer to the casual manner in which exparte decrees are passed and they are subsequently set aside. The present case is a clear illustration which justifies the above observations. It is not possible to absolve the courts from the blame for the tendency which is growing in the litigants to take exparte decrees very casually and at leisure make applications for setting aside them on bald and general averments which are rarely scrutinised, with care which such applications and affidavits deserve, having regard to the stringent provisions of S.5 of the Limitation Act. In my view, the learned Judge was clearly in error in condoning the delay in filing the

Petition for setting aside the exparte decree. The order of the learned Judge, is, therefore, set aside."

This Court held that it is not possible to absolve the Courts from the blame for the tendency which is growing in the litigants to take ex-parte decrees very casually and leisurely making applications for setting aside them on bald and general averments which are rarely scrutinized, with care which such Applications and affidavits deserve, having regard to the stringent Provisions of Section 5 of the Limitation Act.

9. As stated supra, in any case, the Court below passed ex-parte judgment without even framing any issues and without considering points for determination and simply allowed the suit. Therefore, the judgment is not helpful for the case on hand. Therefore, the Court below rightly allowed the petition to condone the delay in filing the petition to set aside the ex-parte decree. However the trial Court allowed the petition without imposing any cost. Therefore the respondent is directed to pay a sum of Rs.5,000/- (Rupees five thousand only) to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

10. With the above direction, this civil revision petition is dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28.06.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
dh

To

The Principal District Judge,
Kanchipuram.



WEB COPY

G.K.ILANTHIRAIYAN,J.

dh



CRP.PD.No.1906 of 2018

WEB COPY

28.06.2021