

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**CRP (NPD).No.2801 of 2018
and
CMP.No.16487 of 2018**

1. M.Gnana Mary
2. S. Rejina Mary
3. S.Vanitha
4. S.Arun Franco

... Petitioners

Vs.

A.Behjamin

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 28.06.2018 passed in I.A.No.122 of 2018 in O.S.No.350 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Valapady.

For Petitioners : Mr.N.Premalatha

For Respondent : Not Ready in Notice
(No Appearance)

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.122 of 2018 in O.S.No.350 of 2009 dated 28.06.2018 on the file of the learned District Munsif-cum-Judicial Magistrate, Valapady, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The petitioners are the defendants 2 to 5 in the suit filed by the respondent for recovery of money. On receipt of summons, the petitioners appeared through their counsel and also filed their written statement. Thereafter, the petitioners failed to appear before the Trial Court and they were set ex-parte and the ex-parte decree was passed on 14.06.2012. Therefore, the petitioners filed a petition to set aside the ex-parte decree with a delay of 1971 days.

3. On a perusal of the affidavit filed in support of the condone delay petition, it reveals that the fourth petitioner's father had never borrowed any

amount from the respondent herein. Therefore, the entire suit claim is bogus and vexatious one. The first petitioner had looked after the case and the fourth petitioner was working in Chennai. As far as the second petitioner is concerned, she was married and she is living separately. As far as the third petitioner is concerned, she is working at Tiruvannamalai. Therefore, they had no knowledge about the decree and when they came to know about the ex-parte decree, they immediately filed a petition to set aside the ex-parte decree with a delay of 1971 days. The Court below dismissed the petition for the reason that they have not stated sufficient cause to condone the delay of 1971 days in filing the petition to set aside the ex-parte decree. The learned counsel for the petitioners submitted that the petitioners may be given one more opportunity to defend the suit, since they have got good case to succeed. The suit is of the year 2009 and the ex-parte decree was passed on 14.06.2012. The petitioners filed a petition to set aside the ex-parte decree with a delay of 1971 days. However, the petitioners may be given one more opportunity to defend the suit, if the decree is not executed till today.

4. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.122 of 2018 in O.S.No.350 of 2009 dated 28.06.2018 is hereby set aside on condition that the petitioners shall deposit a sum of Rs.1,00,000/- to the credit of the suit in O.S.No.350 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Valapady within a period of four weeks from the date of receipt of a copy of this order, failing which this order shall stand automatically cancelled. It is made clear that if the decree is not executed till today, the Court below is directed to accept the payment to be made by the petitioners as directed by this Court. Otherwise this order shall stand automatically cancelled. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.07.2021

Speaking/Non-speaking order
Index : Yes/No
kv

To

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1. The District Munsif-cum-Judicial Magistrate, Valapady.
2. The Section Officer,
V.R. Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

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