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CRP.(NPD).No.2839/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(NPD).No.2839/2019 and CMP.No.18587/2019

[Video Conferencing]

1.Manthiri

2.Mari @ Marimuthu

.. Petitioners

Vs.

1.Lakshmi

2.Krishnan

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 CPC to set aside the Fair and Decretal Order dated 19.03.2019 made in I.A.No.564/2018 in O.S.No.42/2014 on the file of the learned District Munsif cum Judicial Magistrate Court, Pennagaram.

For Petitioners	:	Mr.D.Ajith Kumar
For R1	:	Mr.V.R.Anna Gandhi
For R2	:	Died

ORDER

(1) This Civil Revision Petition is directed against the order dated 19.03.2019 passed in I.A.No.564/2018 in O.S.No.42/2014. The respondents in the Civil Revision Petition are the plaintiffs in the Suit in O.S.No.42/2014 on the file of the learned District Munsif cum Judicial Magistrate Court, Pennagaram.



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- (2) The Suit is for permanent injunction restraining the revision petitioners herein from interfering with the peaceful possession and enjoyment of the Suit property by the plaintiffs. The Suit property is described as the property measuring an extent of about 1.15.0 hectares. The Suit was decreed *ex parte* by judgment and decree dated 16.03.2015.
- (3) Three years later, the revision petitioners/defendants in the Suit filed an application in I.A.No.564/2018 to condone the delay of 1298 days in filing the petition to set aside the *ex parte* decree along with the petition to set aside the *ex parte* decree. However, the delay petition was dismissed by the Trial Court holding that the revision petitioners have not given sufficient reasons to condone the delay. Aggrieved by the order of the Lower Court in dismissing the petition to condone the delay of 1298 days for filing the petition to set aside the petition, the Civil Revision Petition is filed.
- (4) Learned counsel appearing for the revision petitioners submitted that the petitioners were working as labour in Andhra Pradesh and that they did not know about the *ex parte* decree. It was due to the poor economic condition of the petitioners, it is stated that the



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revision petitioners were not in a position to appear before the Trial Court. Learned counsel also submitted that the Lower Court ought to have allowed the petition to render substantial justice taking into account the economic constraints of the petitioners.

- (5) It was further argued by the learned counsel appearing for the petitioners that the reason given by the petitioners for the long delay should be considered, keeping in mind, the principle that the law of limitation are meant only for the advancement of equitable principles and not to destroy the rights of parties. Ultimately, the learned counsel appearing for the petitioners asked for an opportunity to the petitioners to contest the Suit on merits.
- (6) It is not in dispute that the *ex parte* decree was passed on 16.03.2015. In the affidavit filed in support of the petition, it is admitted that the 1st petitioner was taking care of the litigation on behalf of the 2nd defendant and that he was collecting particulars to prepare the written statement. It is also admitted that the Lower Court granted *ex parte* decree as the petitioners failed to file the written statement within time.



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However, contrary to the statement made by the petitioners in the affidavit it is further, stated by the petitioners that they came to know about the *ex parte* decree just few days prior before the petition was filed. It was then pleaded by the 1st petitioner that he was in Andhra Pradesh on account of his job and that he did not have any connection whatsoever, with any one in the native village. He also gave his physical ailments as a reason for the delay.

- (8) It is the specific case that he came to know about the *ex parte* order only after returned to his native and therefore, the delay was not wilful. This Court is unable to accept the plea of petitioners because they are not consistent in the pleadings regarding delay. First of all, it is seen that the reasons stated by the petitioners are not cogent. The 2nd petitioner is also a person who is living in the same village. The contention of the 1st petitioner that he was looking after the case of the 2nd petitioner cannot be accepted. It is seen that the 1st petitioner is the elder brother of the 2nd petitioner and are living in the same village. As a matter of fact, same address is given to both the defendants. The fact that the petitioners received summons is not in dispute. In such circumstances, the delay of 1298 days



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cannot be condoned. When the delay is 1298 days, the affidavit refers to 931 days. There is no explanation for substantial period. The reasons cannot be accepted.

(9) As a matter of fact, this Court is not convinced with the reasons stated by the petitioners in support of the petition under Section 5 of the Limitation Act. The Trial Court considered the case of petitioners and found that the reasons stated are not sufficient to condone the delay of more than 3 ½ years and no documents, or materials are produced to substantiate the case of the petitioners before the Lower Court. Not even an attempt is made to justify the long delay by examining at least one of the petitioners. This Court is unable to find any error or illegality in the order passed by the Lower Court refusing to condone the delay of 1298 days in filing the petition to set aside *ex parte* decree.

(10) As a result, this Civil Revision Petition stands **dismissed** on merits. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

S.S.SUNDAR, J.,



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To

The District Munsif cum Judicial Magistrate Court,
Pennagaram.

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