



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(NPD)No.1786 of 2019
and
C.M.P.No.11709 of 2019

M.Padmaraj

... Petitioner

Vs

1.Sudakar

2.Elumalai

3.G.Rose

Prabakaran (died)

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil procedure code, to set aside the fair and decreetal order dated 13.03.2019 made in I.A.No.136 of 2017 in O.S.No.178 of 2009 on the file of the learned District Munsif, Tiruttani.

For Petitioner : Mr.G.Jeermiah

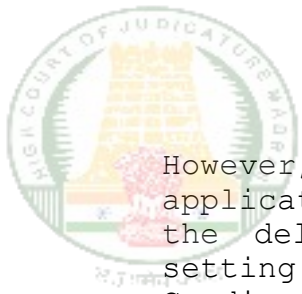
For Respondents R1 & R2 : No appearance

R1 : Mr.R.Karunakaran

ORDER

The present petition has been filed against the order passed in I.A.No.136 of 2017 in O.S.No.178 of 2009, dated 13.03.2019 on the file of the learned District Munsif, Tiruttani, in and by which, the Court below has condone the delay of 2202 days in filing the petition to set aside the exparte decree dated 22.11.2010.

2. The suit was preferred by the petitioner herein which was posted for filing written statement. Since the defendant was called absent, he was set ex-parte and decree was passed against the defendants. The said decree was passed in the year 2010.



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However, after the delay of 2202 days, the present interlocutory application has been filed in the year 2017 seeking to condone the delay in filing. The stand taken by the defendant for setting aside the ex-parte order is that he was suffering from Cardio and Neuro problem and had to undergo Cardio Valve replacement and the Neuro problem which prevented him from contacting his advocate and he was not aware of the ex-parte decree passed in the suit and only in the year 2017, he came to know through his advocate that an ex-parte order was passed and therefore, the present application has been filed on the ground that if the said ex-parte decree is not set aside, it would cause irreparable loss to the defendants. The said application was resisted by the petitioners/plaintiffs who submitted that the delay is not only enormous, but the explanation given for the said delay is not subsistent by any records and that records placed by the defendants does not show that the petitioner had serious health ailment which prevented him from contacting his advocate for a period of more than 7 years. The trial Court after hearing the parties and taking into consideration Ex.P2 to P8 which pertains to the medical treatment taken by the petitioner for Cardio problem, allowed the application condoning the delay on payment of costs of Rs.1,000/-each to the respondents 1 and 3. The said imposed costs may be paid within a particular time frame. Aggrieved by the said order, the present civil revision petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the trial Court has miserably failed to follow the ratio laid down in the matter relating to condoning the delay and the respondents herein are not diligent enough in proceeding the suit as well as in filing the petition for setting aside the ex-parte decree and the reason given for the delay has not been substituted with proper medical records. Each and every days delay have not been explained properly. The order passed by the Court below is wholly unsustainable as the reason given by the Court below are not based on the materials available on record.

4. In spite of service of notice, there is no appearance for the respondents.

5. A perusal of the materials available on record as well as the order passed by the Court below reveals that the respondents herein has taken a plea that he was suffering from Cardio ailment, which prevented him from contacting his advocate and knowing about the status of the case, Ex.P2 to P8 have been filed by the respondents herein to show that he was suffering from cardio problem. However, a careful perusal of the said exhibits reveals though the respondent had been suffering from Cardio problem, but it is a general problem which is suffered by



almost anybody of the age of the respondent.

6. It is well settled that in the case of condonation of delay, the opposite party would also be paid to prejudice if the delay is condoned and so long as the delay has not been explained properly and each and every days delay has been explained to the satisfaction of the Court, the Court shall not entertain the application condoning the delay. However, a perusal of the order passed by the Court below reveals that in a most casual manner, the Court below has condoned the delay of almost 7 years without producing any proper material to substitute the delay. In fact, the trial Court has gone on to state that it is a settled proposition of law, wherein a liberal approach has been taken in the case of condonation of delay. This Court is unable to accept the view taken by the trial Court that condonation of delay should be condoned in a liberal manner. The delay in the present case is not only enormous, but the same having not been explained properly, the trial Court ought not have entertained the petition for condonation of delay. The findings rendered by the trial Court is fully perverse and the said findings cannot be sustained. The order of the trial Court condoning the delay definitely warrants interference at the hands of this Court.

7. Accordingly, the present civil revision petition stands allowed and the order passed by the trial Court is set aside. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sbn

To

The District Munsiff, Tiruttani.

+1cc to Mr.R.Karunagaran, Advocate, S.R.No.18080

C.R.P.(NPD)No.1786 of 2019and
C.M.P.No.11709 of 2019

GSM(CO)
CT/25/08/2021