

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.02.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.R.P.No. 1821 of 2019

1.Sornalatha
2.Umamaheswari

.. Petitioners

Vs

Somasundaram

..Respondent

Prayer : Petition filed under Section 115 of Civil Procedure Code against the order and decreetal order in I.A.No.348 of 2018 in O.S.No.18 of 2013 on the file of Sessions (Fast Track Mahila) Judge, Namakkal, dated 05.01.2019.

For Petitioners: Mr.V.Raghavachari
For Respondent : Mr.P.Valliappan

ORDER

The fair and decreetal order dated 05.01.2019 passed in I.No. 348 of 2018 in O.S.No. 18 of 2013 is under challenge in the present civil revision petition.

2. The respondent is the plaintiff, who instituted the suit for declaration and for permanent injunction. When the trial was progressing, petitioners/defendants 2 and 3 failed to appear for cross-examination. Thus, the trial Court passed an exparte order against the petitioners/defendants 2 and 3. Thereafter, the petitioners, who are the defendants in the suit, filed an interlocutory application to set aside the exparte order and to condone the delay of 148 days in filing the application to set aside the exparte order. Both the applications were considered by the trial Court. The interlocutory application filed under Section 5 of the Limitation Act to condone the delay of 148 days was dismissed on the ground that the petitioners have not produced any supporting document to establish that they suffered the disease of Jaundice. Further, it is contended that they allowed the trial Court to pass the exparte order in order to prolong the suit. On these grounds, the application was dismissed.

3. This Court is of the considered opinion that all the suits are to be disposed of on merits and in accordance with law by affording opportunities to the parties concerned. Undoubtedly, in the present case, the petitioners/defendants 2 and 3 committed the mistake in not appearing before the trial

Court for cross-examination. However, the delay of 148 days, cannot be construed as enormous. Even in such cases, the Courts may condone the delay and fix a time-limit for the parties to complete the trial in order to provide an opportunity to decide the issues on merits and in accordance with law. Contrarily, if the suit is allowed to be decided ex-parte, then the rights of the parties will remain un-adjudicated, which is not preferable.

4. In view of the above, this Court is of the considered opinion that the trial Court would have taken a lenient view in such matters where the delay is not enormous. In this view of the fact, the fair and decreetal order dated 05.01.2019 passed in I.No. 348 of 2018 in O.S.No. 18 of 2013 is set aside and the Civil Revision Petition stands allowed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

ssm

To

The Sessions Judge,
Fast Track Mahila Court,
Namakkal.

Copy to

The Section Officer
VR Section,
High Court, Madras

+1 cc to Mr.V.Raghavachari Advocate sr10925
+1 cc to Mr.P.Valliappan Advocate sr11156

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