



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2213 of 2021

Ragunathan

... Petitioner

Vs

Nageswaran

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to allow this revision and set aside the fair and final order dated 23.08.2021 made in I.A.No.1158 of 2016 in O.S.No.341 of 2005 on the file of District Munsif, Avinashi and consequently allow the application as prayed for.

For Petitioner : Mr.V.P.Sengottuvel

O R D E R

This Petition is filed challenging the order passed in I.A.No.1158 of 2016 in O.S.No.341 of 2005 on the file of the District Munsif, Avinashi.

2.I.A.No.1158 of 2016 was filed under Section 5 of the Limitation Act to condone the delay of 2135 days in filing the Petition to set aside the exparte decree which was passed on 11.11.2010. The Learned Counsel for the Petitioner submitted that the Petitioner was not served with summons in the Suit and summons have not been received by him till the date of filing the Petition. Because of non service of summons, he cannot appear before the Court and therefore, exparte decree was passed on 11.11.2010. He came to know about the exparte decree passed in O.S.No.341 of 2005, only after receiving the copy of the written statement filed in O.S.No.236 of 2016. Therefore, the present Petition.

3.This Petition was contested by the Respondent alleging that the Petition for condoning the delay was not filed immediately after coming to know about the exparte decree through the written statement filed by the Second Defendant, Nageswaran in O.S.No.236 of 2016. Only after 941 days of delay, the Petition has been filed. The Learned District Munsif, Avinashi, on considering the rival submissions found that delay was not properly explained, especially the delay of 941 days which had occasioned even after coming to know about the exparte decree, is not properly explained and this delay cannot be condoned. In this view of



the matter, the Learned District Munsif, Avinashi dismissed the Petition. Therefore, the present Petition.

4. Considered the submissions of the Learned Counsel for the Petitioner and perused the records.

5. The Learned Counsel for the Petitioner submitted that the Suit in O.S.No.341 of 2005 was filed by the Respondent for the relief of declaration and injunction, in which the Respondent has no right. The Petitioner has valid defence in the Suit to contest the case and prayed for an opportunity to the Petitioner to contest the Suit.

6. However, as narrated above, though the delay in filing the Petition to set aside the exparte decree is 2135 days and reason attributed for the delay is non-service of summons on the Petitioner, this Court finds that why the Petitioner had remained silent even after coming to know about the exparte decree passed in O.S.No.341 of 2005 from the written statement filed by the Second Defendant, Nageswaran in O.S.No.236 of 2016.

7. Had the Petitioner been conscious expected of a man of ordinary prudence, he ought to have filed Petition to set aside the exparte decree immediately after coming to know about the exparte decree passed. He has not done that. There is a delay of 941 days even after coming to know about the exparte decree and it cannot be condoned. A litigant is expected to be vigilant and prosecute the case with all due care and diligence. It has not been done by the Petitioner in this case. The delay is not properly explained. Therefore, this Court finds no reason to interfere with the order of the Learned District Munsif, Avinashi passed in I.A.No.1158 of 2016. Hence, the order of the Learned District Munsif, Avinashi is confirmed.

8. Resultantly, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

ay/jai

To

The District Munsif Court, Avinashi.

C.R.P.No.2213 of 2021

PA (CO)

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GM (13/11/2021)