



CRP.(PD).No.3240/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.3240/2019 & CMP.No.21108/2019

[Hybrid Mode]

P.Krishnamoorthy

.. Petitioner /
1st Defendant

Vs.

1.Mrs.Rajammal
2.Mrs.Pazhaniyammal
3.Mr.Senthilkumar
4.Mrs.Sasikala
5.Miss.Devi

.. Respondents
/ Plaintiffs 1 to 5

Prayer:- Civil Revision Petition filed under section 115 CPC against the fair and decreetal order dated 15.04.2019 passed by the learned District Munsif Court Judge, Chennai, in IA.No.1094/2017 in OS.No.202/2013.

For Petitioner	:	Mr.P.Anbarasan
For Respondents	:	Mr.S.Sounthar



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ORDER

- (1) This Civil Revision Petition is directed against the order dated 15.04.2019 made in IA.No.1094/2017 in OS.No.202/2013 by the learned District Munsif Court Judge, Chennai.
- (2) The Suit was filed by the plaintiffs/respondents 1 to 5 herein for declaration of title and for recovery of possession in respect of the Suit properties which are comprised in different Survey Numbers in Keerangudi Village, Sodhiyakudi, Sirkazhi Taluk, Nagapattinam District.
- (3) The Suit is also for future mesne profits. The revision petitioner was set *ex parte* on 25.04.2016 and later an *ex parte* decree was passed on 09.09.2016. The revision petitioner filed an application to set aside the *ex partee* decree under Order 9 Rule 13 CPC along with an application in I.A.No.1094/2017 to condone the delay of 231 days in filing the petition to set aside the *ex parte* decree. The revision petitioner has stated that he was under treatment for Jaundice for about 9 months at the relevant time and therefore, he could not contact his counsels to give proper instructions.



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- (4) The Lower Court found that the revision petitioner has not produced any record to show that the petitioner was taking treatment for Jaundice in traditional way for about 9 months, as it was contended by the revision petitioner. It is further stated that no document was produced that the petitioner was in bed rest for all the 9 months. Aggrieved by the order of the Lower Court dismissing the petition the above Civil Revision Petition is filed.
- (5) Learned counsel appearing for the revision petitioner submitted that the petitioner has explained the delay of 231 days which occurred due to *bona fide* reasons and that the petitioner's intention was never to protract the proceedings. Learned counsel further submitted that the Lower Court dismissed the application on the ground that the petitioner did not even know the name of the traditional medical practitioner which is irrelevant and that the respondent has not produced any evidence to strengthen the contentions of the petitioner before the Lower Court.
- (6) Having regard to the reasons stated for the delay this Court may also agree that a person need not take treatment for Jaundice for 9



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months. However, the explanation offered by the petitioner may be true in exceptional case and the petitioner who was affected by Jaundice might be taking treatment in traditional way in a village. However, it is not necessary that a person taking treatment in village side should know the name of the person who gave him treatment. In this case, this Court is of the view that the reasons stated by the revision petitioner do not lack *bona fides* and this Court is unable to guess any dilatory strategy. It cannot be said that the delay was caused intentionally. Therefore the Lower Court ought to have considered the explanation offered by the petitioner pragmatically.

- (7) Since there is nothing on record to disbelieve the statement of the petitioner, this Court is expected to show some indulgence in a case of condoning the delay. This Court is unable to accept the reasoning of the Trial Court in dismissing the petition to condone the delay of 231 days in filing the petition to set aside the *ex parte* decree. However, this Court is also convinced that serious prejudice is caused to the respondent in the Civil Revision Petition.



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(8) The delay could have been avoided if the petitioner had exercised due indulgence to avoid the delay. It is seen that the petitioner was set *ex parte* and an *ex parte* decree was passed. Taking note of these facts, the Civil Revision Petition is **allowed** on condition that the petitioner shall pay a sum of Rs.5000/- [Rupees Five Thousand Only], to the respondents within the period of four weeks from the date of receipt of a copy of this order.

(9) Considering the fact that the Suit was filed in the year, 2013, the Trial Court is directed to expedite the trial and dispose of the Suit within the period of six months from the date of receipt of a copy of the order. Consequently connected Civil Miscellaneous Petition is closed.

15.12.2021

cda
Internet : Yes

To
The District Munsif
Chennai.



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S.S.SUNDAR, J.,

cda

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