

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (NPD) No.2529 of 2017
and CMP.No.11553 of 2017

Madanagiriappa

..Petitioner

Vs.

1.Chinnasamy

2.Muniyappa

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 03.04.2017 in I.A.No.430 of 2016 in O.S.No.202 of 2011 on the file of the District Munsif-cum-Judicial Magistrate No.1, Hosur.

For Petitioner : Mr.S.C.Vishwanath

For Respondents : Mr.T.Sathyamoorthy

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 03.04.2017 in I.A.No.430 of 2016 in O.S.No.202 of 2011 on the file of the District Munsif-cum-Judicial Magistrate No.1, Hosur, thereby allowing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The petitioner is the plaintiff and the respondents are the

defendants. The petitioner filed a suit for declaration and injunction in respect of the suit property. The respondents failed to meet their counsel properly to file the written statement in the mean time. Therefore, they were set ex-parte on 10.04.2012 and thereafter the ex-parte decree was passed on 03.08.2012. The respondents filed a petition to set aside the ex-parte decree with a delay of 660 days.

3. A perusal of the affidavit filed in support of the condone delay petition reveals that they did not meet their counsel for giving instructions to file their written statement. When the matter was posted on 10.04.2012 for filing written statement and then set ex-parte and ex-parte decree was passed on 03.08.2012.

4. The learned counsel for the petitioner would submit that absolutely no reason stated in the affidavit filed in support of the condone delay petition and the Court below has also mechanically allowed the petition with a cost of Rs.1,500/-.

5. The respondents may be given one more opportunity to file a suit

on merits and in accordance with law.

6. In view of the above, this Court finds no illegality or infirmity in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. However, the respondents are directed to pay another sum of Rs.3,500/- as cost to the petitioner within two weeks from the date of receipt of a copy of this order. The Trial Court is directed to dispose of the suit, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

19.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The District Munsif-cum-Judicial Magistrate No.1,
Hosur.

G.K.ILANTHIRAIYAN,J.



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