

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.3376 of 2018
and C.M.P.No.19104 of 2018

1.Raman @ Chittibabu
2.P.Anjali

... Petitioners

Vs

1.Kanchana
2.Sudarkodi
3.Vijayalakshmi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order made in I.A.No.55 of 2016 in O.S.No.92 of 2012 dated 16.08.2018 and passed by the Learned District Munsif cum Judicial Magistrate, Arcot.

For Petitioners : Ms.S.Sasikala

For Respondents : Mr.K.Mohana Murali for R2

ORDER

This Civil Revision Petition is filed to set aside the order made in I.A.No.55 of 2016 in O.S.No.92 of 2012 dated 16.08.2018, passed by the Learned District Munsif cum Judicial Magistrate, Arcot.

2. The petitioners are the defendants and the respondents are the plaintiffs in the suit. The respondents filed a suit for declaration, mandatory injunction and for recovery of possession in respect of the suit property. On receipt of the suit summons, the petitioners could not meet their counsel and thereby failing to file their written statement and therefore, they were set exparte, due to non filing of written statement on 13.03.2014. Thereafter, exparte decree was passed in the suit on 19.03.2015. On receipt of the exparte decree, the respondents filed an execution petition in E.P.No.13 of 2015.

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3. In the execution petition, the petitioners were served notice on 17.07.2015 and they engaged a counsel in entered her appearance before the Execution Court. The petitioners sought time for filing counter on various

occasions and finally, they failed to file their counter in the execution petition. Thereafter, in the Execution Court also, they were set exparte and delivery of possession was ordered in the Execution Court. At that juncture, the petitioners filed a petition to set aside the exparte decree in the suit with the delay of 309 days in filing the petition to set aside the exparte decree.

4. In the affidavit filed in support of the condone delay petition, it is stated that their counsel as well as they fell ill and suffered from jaundice and that they could not instruct their counsel to file their written statement. Admittedly, there are two defendants and there is absolutely no proof to show that they suffered with jaundice.

5. That apart, in the execution proceedings, they duly received a notice on 17.07.2015 itself, whereas, they filed a petition to set aside the exparte decree only on 22.02.2016. Therefore, there is no explanation for the delay in filing the petition to set aside the exparte decree. When the petitioners have got knowledge about the exparte decree even on 17.07.2015, they did not take any step to file a petition to set aside the exparte decree dated 19.03.2015. Therefore, the court below rightly

G.K.ILANTHIRAIYAN. J.

rnadismissed the petition to condone the delay of 309 days and this Court finds no infirmity or irregularity in the order passed by the court below.

6. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

16.04.2021

Internet: Yes
Index: Yes/No
rna

To

The District Munsif cum Judicial Magistrate,
Arcot.

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