

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

CRP (PD).No.3837 of 2018
and CMP.No.22571 of 2018

K.Aruldass

...Petitioner

Vs

Aruldass (since deceased)

1. K.Radhamani
2. A.Santhosh
3. A.Raja

...Respondents

Prayer:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and final order dated 19.09.2018 passed in I.A.No.217 of 2018 in I.A.No.494 of 2012 in O.S.No.40 of 2009 on the file of the learned Subordinate Judge, Nilgiris @ Udthagamandalam.

For Petitioner : Mr.S.Sabarish
for Kingston Jerold S.
For Respondents : M/s.Dr.R.Gowri Selvakumar

ORDER

The revision arises out of the order passed in I.A.No.217 of 2018 in I.A.No.494 of 2012 in O.S.No.40 of 2009 by the learned Subordinate Judge, Nilgiris at Udhagamandalam.

2. The petitioner K.Aruldass instituted O.S.No.40 of 2009 before the Subordinate Judge, Nilgiris at Udhagamandalam against the defendant K.Aruldass seeking damages of Rs.1,50,000/- with interest at 12% and for permanent injunction. The suit was decreed exparte on 09.03.2010. Thereafter, the defendant K.Aruldass filed I.A.No.494 of 2012 to set aside the exparte decree along with an application to condone the delay. It appears that the delay petition came to be dismissed by the Trial Court. Challenging the same, the defendant preferred appeal before the District Court in CMA.No.11 of 2012. The Appellate Court condoned the delay of 245 days in filing the application to set aside the ex-parte decree. The order of the Appellate Court was confirmed by this Court in CRP.No.3520 of 2012, vide order dated 09.12.2017.

3. An application I.A.No.494 of 2012 was filed to set aside the exparte decree. It appears that during the pendency of the said petition,

the defendant Aruldass died on 17.07.2017. Hence, his legal heirs took out 3 applications, viz., I.A.No.217 of 2018, I.A.No.265 of 2018 and I.A.No.51 of 2019 seeking condonation of delay of 238 days in filing the impleading petition; to set aside the abatement and for impleading them as parties in the set aside petition. I.A.No.217 of 2018 was allowed on 19.09.2018. Questioning the same, the present revision has been filed.

4. It is the contention of the learned counsel for the petitioner Mr.S.Sabarish that actual delay in bringing the legal heirs is 298 days, but it was wrongly mentioned as 238 days in the application. It is further contended that the legal heirs of the defendant Aruldass did not give sufficient reason to condone the delay and the delay was condoned mechanically without considering the objections raised by the revision petitioner/respondent.

5. Per contra, the learned counsel appearing for the respondents Dr.R.Gowri Selvakumar would argue that originally the petition was filed to condone the delay of 298 days, but the office of the Lower Court directed the respondents to exclude 60 days and therefore, the application was amended mentioning 238 days. She further added that after the delay

was condoned in I.A.No.217 of 2018, I.A.No.265 of 2018 was allowed on 11.02.2019 and the respondents were impleaded in the set aside petition in I.A.No.51 of 2019 by order dated 21.07.2020. It is further submitted that the set aside petition itself was allowed on cost of Rs.2,000/- on 15.04.2021, and the respondents paid the cost on the same day and it is now posted for cross-examination on the plaintiff's side witness. According to the learned counsel, this CRP itself has become infructuous.

6. Heard rival submissions and perused the materials available on record.

7. In the present case, it is not in dispute that the suit OS.No.40 of 2019 was filed for recovery of damages and for permanent injunction. The suit was decreed exparte on 09.03.2010 and the defendant filed application to set aside the exparte decree with a condone delay petition. As rightly pointed out by the learned counsel for the respondent, the delay petition was allowed by the Appellate Court in CMA.No.11 of 2012 and the the same was confirmed by this Court in CRP.3520 of 2012 on 09.02.2017. Since the defendant Aruldass died pending the set aside petition, his legal heirs wanted to come on record to defend the suit, for

which necessary applications were filed. The application filed to condone the delay was allowed on 19.09.2018. In the first round of litigation, the delay of 245 days in filing the application to set aside the exparte decree was allowed and once the delay is condoned, the defendant is entitled to contest the suit. Since the defendant Aruldass passed away pending set aside petition, his legal heirs filed the petitions as mentioned above.

8. It is pertinent to note that admittedly there was a delay in filing the petitions. The learned Judge on proper appreciation of the facts has rightly condoned the delay. Even, if it was a delay of 298 days in filing the condone delay application, the delay deserves to be condoned to enable the legal heirs of the defendant to come on record to defend the suit. Hence, I find no illegality or irregularity in the order impugned in this petition. The Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order : Yes/No
pvs

To

1. The Subordinate Judge,
Nilgiris @ Udhagamandalam
2. The Section Officer,
V.R.Section, High Court, Madras.

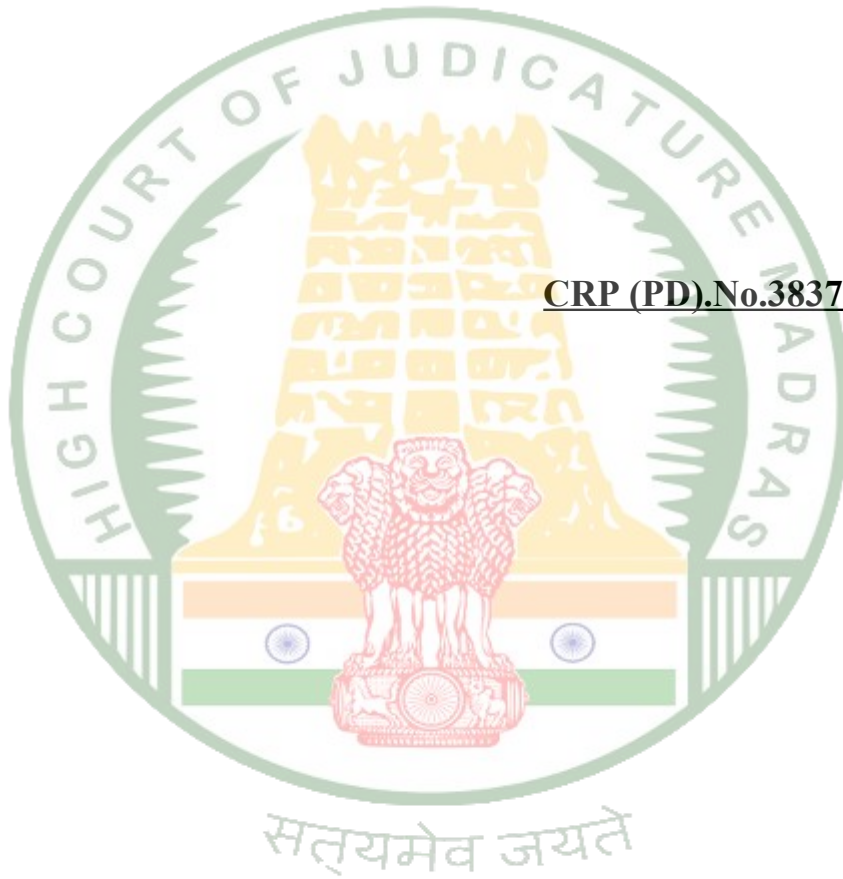


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