



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.06.2021

PRONOUNCED ON : 02.07.2021

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CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(MD)No.1062 of 2012

(Through Video Conferencing)

Kalimuthu

...Petitioner/Petitioner

Vs

1.Rajammal

2.Birundha

3.Sharmili

...Respondents/Respondents

Prayer:- This Civil Revision Petition has been filed U/s.115 of C.P.C, against the fair and decreetal order, dated 23.01.2012 passed in IA.No.526 of 2010 in OS.No.805 of 2007, by the Additional District Munsif, Tenkasi.

For Petitioner : Mr.R.J.Karthick for Mr.M.Saravanan

For Respondents : Mr.B.Prahalad Ravi

ORDER

1.This Civil Revision Petition has been filed, against the fair and decreetal order, dated 23.01.2012, passed in IA.No.526 of 2010 in OS.No.805 of 2007, by the Additional District Munsif, Tenkasi.

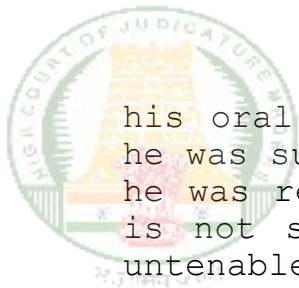
2.The facts of the case, in a nutshell, are that the 1st Defendant is the Petitioner and the Plaintiffs are the Respondents. The suit was filed for declaration of title, permanent injunction, recovery of possession and mandatory injunction. For non-filing of the written statement, an exparte decree was passed on 10.08.2009. The 1st Defendant had filed the present IA to condone the delay of 423 days in filing the application to set aside the said exparte decree and the said application was resisted by way of counter. Since the said application was dismissed by the impugned order, this Criminal Revision Petition has been filed.

3.The learned counsel for the Petitioner has submitted that since the Petitioner was under treatment for jaundice, he could not file the written statement in time and also he could not be present on the date of the hearing. The learned counsel for the Respondents has submitted that the exparte decree was passed and it is neither



willful nor wanton and that in the interest of justice, the Petitioner may be given an opportunity to contest the suit, by allowing this Civil Revision Petition. The learned counsel would rely on **2011 7 MLJ 652 (Meenakshisundaram Textiles Vs. Valliammal Textiles Limited)** and **2015 3 LW 241 (S.Arul Dhas Vs. F.Hubert)**.

- 4.The learned counsel for the Respondents has submitted that the reasons assigned by the Petitioner for condoning the delay are not acceptable and that the Petitioner wantonly and deliberately remained exparte before the court below and that only in order to protract the proceedings, the petition has been filed and hence, the impugned order is sustainable.
- 5.This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
- 6.The reason assigned by the Petitioner for condoning the delay in filing the application to set aside the exparte decree is that since he was under treatment for jaundice, he could not file the written statement in time and could not appear on the date when the exparte decree was passed and it is neither willful nor wanton.
- 7.Where there is sufficient cause shown with supporting materials and the application for condonation of delay has been moved bona fide, the court would normally condone the delay, but in cases where the delay has not been explained at all by valid evidence, the discretion of the court in such cases would normally tilt against the applicant, who seeks to condone the delay.
- 8.In this case, it is seen from the records that earlier on 29.02.2008, an exparte order was passed against the Petitioner and to set aside the same, IA.No.223 of 2008 was filed by him and the said IA was allowed on payment of cost on or before 30.07.2009, failing which, the IA would be dismissed. Since the said cost was not paid by the Petitioner, the said IA was dismissed on 31.07.2009.
- 9.In IA.No.223 of 2008, the 1st Defendant took a stand that he could not file the written statement in time since he was suffering from jaundice. Thereafter, in EA.No.73 of 2010, an exparte order was passed against the Petitioner and as against the same, he had filed an application, wherein also he assigned the same reason i.e. he was suffering from jaundice from 25.1.2011. Even in the present application also, the Petitioner took the same stand that since he was under treatment for jaundice, he could not appear and contest the suit. However, to substantiate his stand, the Petitioner did not produce any valid material evidence. But, in



his oral evidence, he had deposed that it is false to state that he was suffering from jaundice and that he did not know as to when he was recovered from jaundice. Thus, his evidence shows that he is not suffering from jaundice and as such, the said reason is untenable.

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10.To sum and substance, as stated above, the reasons assigned by the Petitioner for condoning the delay given are in usual and casual terms. Unless the reasons assigned are bona fide and unless it is shown that there were bona fide efforts, there is no necessity to accept the usual explanations. There is no proper and satisfactory explanation offered by the Petitioner for each and every day of delay and as such, this Court is of the view that the court below was right in refusing to condone the delay in filing the application to set aside the exparte decree, by the impugned order, which warrants no interference.

11. In fine, this Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

Srcm

To

The Additional District Munsif, Tenkasi

+1 CC to Mr.B.PRAHALAD RAVI, Advocate (SR-21241[F] dated 05/07/2021)

Order in
CRP (MD)No.1062 of 2012
02.07.2021

KM(09.07.2021) 3P 3C