



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.01.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P(MD)No.1881 of 2011

and

M.P(MD)No. 1 of 2011

1.Shanthi
2.Minor Saranya
3.Minor Manikandan ... Revision Petitioners/Petitioners/Defendants

(Petitioners 2 & 3 are rep. their mother
and Guardian, the 1st petitioner herein)

Vs.

N.Swaminathan ... Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition is filed under Section 115 of Civil Procedure Code as against the fair and decreetal order passed by the learned Sub Judge, Pudukkottai in I.A.No.523 of 2010 in O.S.No.140 of 2005 dated 01.07.2011.

For Petitioners : Mrs.K.R.Shivasankari

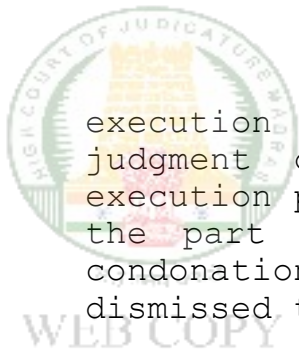
For Respondent : Mr.S.Deenadhayalan

O R D E R

The defendants in O.S.No.140 of 2005 are the petitioners. The revision is against an order dismissing their application seeking condonation of delay of 100 days in filing a petition to set aside the ex-parte decree.

2. The suit came to be decreed ex-parte on 13.11.2007. The petitioners have filed the written statement disputing the very execution of the promissory note by the husband of the first petitioner and the father of the petitioners 2 and 3. The reason assigned for the delay is that the first petitioner was suffering from Viral fever and as such, she could not meet the counsel and to instruct him to cross-examine the plaintiff.

3. This application was opposed on the ground that though the application was filed in 2007, it was returned on 14.09.2008 and it was not re-presented till 03.02.2010. In the interregnum, an



execution petition came to be filed in E.P.No.14 of 2009 and the judgment debtors namely, the petitioners had appeared in the execution proceedings on 06.03.2009. This demonstrates negligence on the part of the petitioners in prosecuting the application for condonation of delay. The trial court accepted the defence and dismissed their application. Hence, this revision.

4. I have heard Mrs.K.R.Shivasankari, learned counsel appearing for the petitioners and Mr. S.Deenadhayalan, learned counsel appearing for the respondent.

5. Mrs.K.R.Shivasankari, learned counsel appearing for the petitioners would vehemently contend that the court was not right in adopting very strict approach in the matter of delay. She would submit that the delay is only 100 days and the court should have adopted a very liberal approach. She would also point out that in **2019 SCC online 1634 (University of Delhi Vs. Union of India and others)** the Hon'ble Supreme Court has pointed out that the courts must adopt a liberal approach in the matters of delay more particularly, when substantial rights are involved.

6. Contending contra, Mr.B.Deenadhayalan, learned counsel appearing for the respondent would point out that the application for condonation of delay was not re-presented for nearly two years and therefore, the petitioners, who were negligent in prosecuting the proceedings, are not entitled to a discretionary order of condonation of delay.

7. I have considered the rival submissions.

8. There is delay of 100 days only. The delay in re-presentation has been condoned, the decree holder/respondent herein cannot take advantage of the delay in re-presentation to non-suit the petitioners. The trial court had taken note of the delay in re-presentation and had held that the petitioners have not made out sufficient cause. Sufficient cause that is to be made out in an application is only for the delay till the date of filing of the application and the delay in re-presentation, which occurs due to mistake on the part of the counsel, cannot be put against the party. I am therefore of the opinion that the trial court was not right in taking into account the delay in re-presentation and concluding that the petitioners have not made out sufficient cause for condonation of delay. Hence, the order of the trial court is set aside. The application in I.A.No.523 of 2010 will stand allowed. The delay in filing the application to set aside ex-part decree has been condoned. The trial court is directed to number the application under Order 9 Rule 13 C.P.C and proceed with the same in accordance with law.



9. In fine, this revision is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

To:

- 1.The Sub Judge, Pudukkottai
- 2.The Section Officer(2 copies)
VR Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-2319[F] dated 29/01/2021)

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