



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2021

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P (NPD)MD)No.2691 of 2012andC.M.P (MD)No.6530 of 2018P.Jegajeevan : Petitioner/Petitioner/3rd Defendant

Vs.

Smt.V.N.Veeramani (Died)

1.Palaniandi	: 1 st respondent/2 nd respondent/2 nd plaintiff
2.V.Kumarbabu	: 2 nd respondent/3 rd respondent/3 rd plaintiff
3.Baby Sakila	: 3 rd respondent/4 th respondent/4 th plaintiff
4.V.Nagaraj	: 4 th respondent/5 th respondent
5.Minor Iswarya	: 5 th respondent/6 th respondent

(Through his father and natural guardian
V.Nagaraj)

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C , to call for the records and set aside the order of dismissal dated 13.09.2012 passed in the application I.A.No.970 of 2011 in O.S.No.205 of 2006 by the learned District Munsif, Melur.

For Petitioner	: Mr.J.Barathan
For R-1 & R-3	: No Appearance
For R-2, R-4 & R-5	: Mr.R.Manimaran

ORDER

This civil revision petition is filed against the order dated 13.09.2012 passed in I.A.No.970 of 2011 in O.S No.205 of 2006 by the learned District Munsif, Melur, Rejecting the application filed by the petitioner/3rd Defendant for condoning the delay in setting aside the ex-parte decree.

2.The respondents/plaintiffs herein had filed a suit for Permanent injunction. The petitioner/ 3rd defendant had contended that the 6th defendant in the suit Named Mr.V.M.Sundaresan had conducted the suit on his behalf and also on behalf of the defendants 2, 4 and 5. Since the 6th defendant periodically



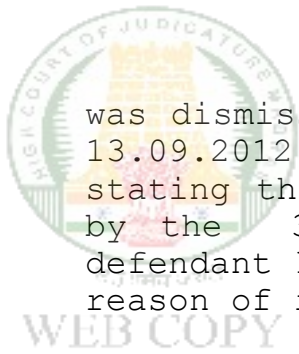
contacted their counsel on behalf of themselves and informed them about the stage of the suit, out of fond hope, the petitioner/3rd defendant believed that he will intimate or inform the petitioner / 3rd defendant, whenever his presence is required either at the time of filing written statement or commencement of trial. In the meanwhile during first week of April 2009, the petitioner/3rd defendant was severely affected with Jaundice and advised to take bed rest for five months that too without moving anywhere and as such, he could not contact either 6th defendant or their counsel.

3. According to the petitioner/3rd defendant that during the first week of December 2009, when he contacted the 6th defendant regarding the stage of the suit, he replied that he was also unable to contact their counsel due to his sufferance and ailment in stomach and again from January 2010 to May 2010, the petitioner/3rd defendant had been suffering from jaundice and thereupon, due to heavy commitments, he could not contact the counsel or 6th defendant to enquire about the stage of the suit. On 24.09.2011, when the petitioner/3rd defendant met the 1st defendant Mr. patchaimuthu in the Bazaar, he said that the suit was decreed in favour of the respondents/plaintiffs herein in the year of 2009 itself. The petitioner/3rd defendant was unable to contact the 6th defendant or his counsel immediately. Thereafter, he had perused the bundle through his present counsel on 26.09.2011 and learnt that an ex-parte decree was passed against him in the suit even as early on 06.04.2009 by the trial Court for his non-appearance.

4. For the reasons stated above, the petitioner/3rd defendant had filed I.A.No.970 of 2011, immediately within 30 days from the date of knowledge of the decree(26.09.2011), to condone the delay in filing the petition to set aside the ex-parte decree passed against him on 06.04.2009 and to conduct the main suit on merits.

5. The said application was also resisted by the respondents, who are the plaintiffs/respondents stating that the suit was contested by the 1st defendant alone on behalf of other defendants and the 6th defendant never contested the case. The written statement was filed only by the 1st defendant and adopted by the other defendants and the plaintiffs/respondents to contest their case, examined P.W.1 to P.W.3. Their witnesses P.W.1 to P.W.3 were cross-examined only by the 1st defendant's counsel. Thereafter, the defendants Counsel wilfully failed to Participate in further proceedings and the suit was decreed ex-parte. Therefore, having knowledge about the filing of the suit and after engaging the counsel, the defendants had deliberately allowed the suit to be decreed ex-parte knowing fully well that they have no case on merits.

6. Further, there is a delay of 877 days in filing the application to set aside the ex-parte decree. The said application



was dismissed by the learned District Munsif, Melur, by order dated 13.09.2012 passed in I.A.No.970 of 2011 in O.S No. 205 of 2006, stating that the delay of 877 days has not been properly explained by the 3rd defendant/petitioner and observed that petitioner/3rd defendant has not produced any medical evidence to substantiate the reason of illness stated by him.

7. In the light of the above factual matrix, the question that arises for consideration is,

"Whether the delay of 877 days in setting aside the ex parte decree is justifiable?"

8. The learned counsel for the petitioner/3rd defendant argued that the trial Court has erred in coming to a conclusion that delay of each and every day has to be explained and the delay of 877 days has not been properly explained.

9. This Civil Revision petition was vehemently opposed by the learned counsel appearing for the respondents 2, 4 and 5, contending that the defendants had purposely allowed the suit to be decreed ex-parte knowing fully well that they have no case on merits. The delay is quite wilful and wanton. He further submitted that the respondents had acquired a valuable right by virtue of ex-parte decree and if the delay is condoned, the respondents will be put to much loss and hardship.

10. This Court heard the learned counsel appearing on either side and perused the materials placed before it.

11. No doubt, the delay is huge and the test is not the length of delay but the reasons for the same. The Hon'ble Supreme Court also laid down principles applicable to an application for condonation of delay in the case of **Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others**, reported in **(2012) 12 SCC 649**, wherein it has been held as follows:

"21: From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.



iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of...."

12. The expression "sufficient cause" as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show *malafides* in not approaching the Court within the period of limitation, generally as a normal Rule, delay should be condoned. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter (**vide S.Ganeshraju v. Narasamma** reported in **(2013) 11 SCC 341**).

13. In view of the aforesaid discussion, the order of dismissal passed by the Court below is liable to be set aside.

14. In the result, this Civil Revision Petition is allowed and the order of dismissal dated 13.09.2012 passed in I.A.No.970 of 2011 in O.S No.205 of 2006 passed by the learned District Munsif, Melur, is set aside and the delay is condoned on a condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) as cost to the respondents/plaintiffs. The learned District Munsif, Melur is directed to be dispose of the suit within a period of six months from the date of receipt of copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

pm

To

1.The District Munsif ,
<https://hcservices.ecourts.gov.in/hcservices/>
Melur.



2.The Section Officer,(2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.MANIMARAN, Advocate (SR-10734[F] dated 12/03/2021)

+1 CC to Mr.T.R.JEYAPALAM, Advocate (SR-10781[F] dated 12/03/2021)

Order made in
C.R.P. (NPD) (MD) No.2691 of 2012
11.03.2021

VB (26.03.2021) 5P 6C