



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2021

CORAM

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.R.P.(MD)No.406 of 2021

and

C.M.P.(MD)No.2189 of 2021

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1.Subbaian
2.Savadamuthu
3.Selvam

... Petitioners

Vs.

1.Balakrishnan
2.Sowdeeswari (Died)
3.Minor.Dhanasekaran
4.Minor.Sivaperumal
(Through their father and
Guardian/1st respondent)

... Respondents

Prayer : Civil Revision Petition filed under Section 115 C.P.C., to set aside the fair order passed in I.A.No.1411 of 2018 in O.S.No.106 of 2009 dated 13.02.2020 on the file of the Principal District Munsif, Dindigul by allowing this civil revision petition.

For Petitioners : Mr.J.Alaguram Jothi

ORDER

This civil revision petition has been filed to set aside the order passed in I.A.No.1411 of 2018 in O.S.No.106 of 2009 dated 13.02.2020 on the file of the Principal District Munsif, Dindigul.

2.The learned counsel for the petitioners would submit that the respondents herein filed a suit in O.S.No.106 of 2009 for declaration and permanent injunction. The petitioners herein are the defendants 2 to 4 in the above suit. Due to the non-appearance of the petitioners herein, the suit was decreed as ex-parte on 19.11.2011. The case of the petitioners is that the first petitioner contested the suit on behalf of the other defendants also. In the year 2011, he suffered from jaundice and due to same, he was unable to contest the suit as he was taking treatment in Kerala from 2014 to 2015. Only after receiving notice from the Court below in Execution Petition in E.P. No.2 of 2016, he came to know about the ex-parte decree and therefore, there was a delay of 2417 days in filing the petition to set aside the ex-parte order and thereafter, the petitioners filed an application in IA.No.1411 of 2018 to condone the delay of 2417 days in filing the petition to set aside the ex-parte order, which was



dismissed on 13.02.2020. Against which, the present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

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4. Perusal of records shows that the suit is of the year 2009 and the defendants 2 to 4, who are petitioners herein, set ex-parte on 19.11.2011 and the petitioners have not taken any steps to set aside the ex-parte decree and they had contested the execution petition for nearly two years and thereafter, the first petitioner come forward with the interlocutory application in I.A.No.1411 of 2018 in O.S.No.106 of 2009 to condone the delay of 2417 days in filing the petition to set aside the ex-parte decree by stating that he had been taking treatment for jaundice in Kerala and therefore, he was not able to file the petition to set aside the ex-parte decree. It is unfortunate that the petitioners had been dragging on the proceedings for so long. The reasons stated by the first petitioner are not acceptable reasons for condoning such huge delay. It is not in dispute that the petitioners have been contesting the execution proceedings and therefore, by applying the principles laid down in a case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others**, [2013 (5) CTC 547 (SC) : 2013 (5) LW 20], I am not inclined to interfere in the order passed by the learned Judge. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Gns

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Principal District Munsif,
Dindigul.

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VB (30/04/2021) 3P / 2C