



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.07.2021

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.R.P (NPD) (MD) No.1123 of 2014

Velammal.S

...Petitioner/Petitioner/Defendant

Vs.

Mary Packiathai.F

...Respondent/Respondent/Plaintiff

PRAYER:- The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.A.No.793 of 2012 dated 10.02.2021 in O.S.No.311 of 2005 passed by the learned Principal District Munsif Court, Ambasamudram.

For Petitioner	:	Mr.P.Bhaskar
For Respondent	:	No appearance

ORDER

The present Civil Revision Petition has been filed, against the fair and decreetal order, dated 10.02.2021 , passed in I.A.No.793 of 2010 in O.S.No.311 of 2005, by the Principal District Munsif Court, Ambasamudram.

2.The facts of the case, in a nutshell, are that the Defendant is the Petitioner and the Plaintiff is the Respondent. The suit was filed for permanent injunction and other reliefs and an exparte decree was passed on 05.09.2007. The petitioner had filed the above application to condone the delay of 1012 days in filing the application to set aside the said exparte decree. Since the said application was dismissed by the impugned order, this Civil Revision Petition has been filed.

3.The learned counsel for the Petitioner has submitted that since the Petitioner was under treatment for jaundice, she could not be present on the date when the exparte decree was passed and since she is an illiterate, she could not get instructions from her advocate to contest the case and thus, the delay had occurred and it is neither willful nor wanton and that the reasons assigned by the petitioner have not been properly appreciated by the Court below and that in the interest of justice, the petitioner may be given an opportunity to contest the suit, by allowing this Civil Revision Petition.

4.Though the name of the respondent is printed in the cause list, the respondent has not chosen to appear either in person or through counsel.



5.This court heard the learned counsel for the petitioner and considered his submissions and also carefully perused the materials placed on record.

6.The reasons assigned by the Petitioner for condoning the delay in filing the application to set aside the exparte decree is that since the petitioner was under treatment for jaundice, she 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 fidely, 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, 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.

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

Sd/-

Assistant Registrar (Cs-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp/msa

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:

1.The Principal District Munsif, Ambasamudaram



2.The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.BHASKAR, Advocate (SR-22988[F] dated 16/07/2021)

C.R.P (NPD) (MD) No.1123 of 2014
15.07.2021

DKS (CO)
KB (29.07.2021) 3P 5C