



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.R.P (MD) (NPD) .No.1415 of 2014

and

M.P. (MD) No.1 of 2014

S.S.A.Kathiresan
Defendant

... Petitioner/Petitioner/10th

-vs-

1.Subbulakshmi
2.Murugeswari
and 2

... Respondents 1 and 2 /Respondents 1
/Plaintiffs

Gurusamy Nadar (died)
3.Muniappan
4.Ravindran
5.Kasthuri
6.Rajathi
7.Vairamani
8.Thangapandi
9.Murugan
10.Ilanjipandi
11.G.Saroja

...Respondents 3 to 10/Respondents 4 to 12
/Defendants 2 to 9

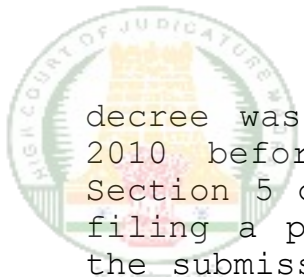
PRAYER: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order passed in I.A.No.210 of 2010 in O.S.No.59 of 2008 on the file of the Sub Court, Virudhunagar, dated 07.04.2014.

For Petitioner : Mr.A.Ashokkumar
For R1 & R2 : Mr.M.Prabu
For R3 to R11 : Exparte

O R D E R

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.210 of 2010 in O.S.No.59 of 2008 on the file of the Sub Court, Virudhunagar, dated 07.04.2014.

2.The plaintiffs have filed a suit in O.S.No.59 of 2008. The case was posted for filing written statement. Since the petitioner has not filed written statement, he was set ex-parte and ex-parte



decree was passed. Thereafter, the petitioner filed I.A.No.210 of 2010 before the Subordinate Court, Virudhunagar District under Section 5 of the Limitation Act to condone the delay of 113 days in filing a petition to set aside the ex-parte decree. After hearing the submissions made on either side, the learned Subordinate Judge, Virudhunagar by order dated 07.04.2014 has dismissed the application, against which, the present revision has been filed by the petitioner.

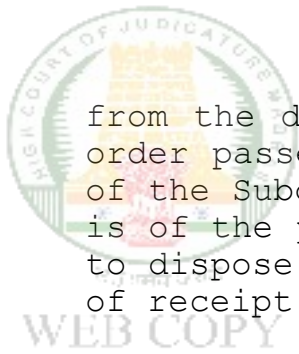
3. Heard the learned counsel appearing for the petitioner/10th defendant and the learned counsel appearing for the respondents 1 and 2/plaintiffs.

4. The learned counsel for the petitioner submitted that the court should be liberal while deciding the petition to condone the delay in filing a petition to set aside ex-parte decree. Further, the learned counsel submits that he could not produce medical certificate since he was not taking treatment in a authorized medical practitioner. According to the learned counsel, non-production of medical certificate could not be a ground for dismissal and he prays for setting aside the order dismissing I.A.No.210 of 2010 for condoning the delay in filing a petition to set aside the ex-parte decree. The learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in **Bank of India Vs. M/s.Mehta Brothers and others** reported in (2009(1) TNCJ 27 (SC) .

5. The learned counsel appearing for the respondents 1 and 2/plaintiffs would submit though the petitioner has pleaded that he suffered from some illness, he did not produce any medical certificate to prove the same. Further, the learned counsel submitted that the reasons stated by the petitioners are not acceptable to condone the delay and therefore, the learned Sub Judge, Virudhunagar has rightly dismissed the application for condoning the delay of 113 days. In support of his submission, the learned counsel for the petitioner has referred the judgment of the Hon'ble Supreme Court of India in **N.Mohan Vs. R.Madhu in Civil Appeal No.8898 of 2019**. He would further submit that if the court feels to allow this petition, the same may be allowed on payment of costs.

6. This Court has perused the materials available on record and considered the rival submission.

7. Considering the facts and circumstances and considering the fact that the suit is for partition and if the ex-parte decree is not set aside, the petitioner's right would be defeated, this Court is inclined to allow this revision, but on payment of costs. The petitioner shall pay Rs.1500/- (Rupees one thousand and five hundred only) each to the respondents 1 and 2, within a period of one week



from the date of receipt of a copy of this order. Accordingly, the order passed in I.A.No.210 of 2010 in O.S.No.59 of 2008 on the file of the Subordinate Judge, Virudhunagar, is set aside. Since the suit is of the year 2008, the Subordinate Judge, Virudhunagar is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

8.In fine, this Civil Revision Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

To:

1. The Subordinage Judge , Virudhunagar

2. The Section Officer, V.R Section,
Madurai Bench of Madras High Court
Madurai. (2 Copies)

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-16878[F] dated
21/04/2021)

Order made in
C.R.P (MD) (NPD) .No.1415 of 2014
and
M.P. (MD)No.1 of 2014

Dated:
19.04.2021

CN(06.05.2021) 3P 5C