



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	17.12.2020
DELIVERED ON	08.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No. 2506 of 2015 (NPD)

K. Arumuga Thevar ... Petitioner/Petitioner/Plaintiff

vs.

1. Muppidthi Ammal
2. Muthupandian
3. Nangaiyar
4. Arumuga Kambar ...Respondents/Respondents/Defendants

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order, dated 19.08.2015 passed in I.A. No.545 of 2014 in O.S. No.72 of 2009 on the file of the I Additional District Munsif Court, Tirunelveli.

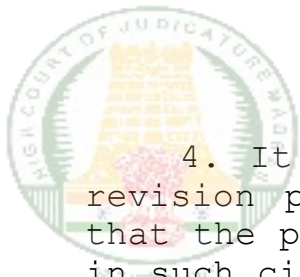
For Petitioner : Mr.M.P. Senthil
For Respondents : Mr.S.P. Maharajan

O R D E R

The Civil Revision Petitioner/Petitioner/Plaintiff has filed this revision petition to set aside the fair and decreetal order, dated 19.08.2015 in I.A. No.545 of 2014 in O.S. No.72 of 2009 passed by the learned I Additional District Munsif, Tirunelveli.

2. I heard Mr.M.P. Senthil, learned counsel appearing for the revision petitioner and Mr.S.P. Maharajan, learned counsel appearing for the respondents and perused the material documents available on record.

3. The revision petitioner herein has filed a suit in O.S. No. 72 of 2009 on the file of the I Additional District Munsif Court, Tirunelveli for permanent injunction. In the said O.S. No. 72 of 2009, an exparte order was passed on 01.06.2011 against the revision petitioner herein. Against the said order, the revision petitioner/plaintiff has filed a petition in I.A. No. 545 of 2014 in O.S. No. 72 of 2009 to condone the delay of 733 days in filing the petition and the same was dismissed with costs on 19.08.2015. Hence, the revision petitioner is before this Court.



4. It is contended by the learned counsel appearing for the revision petitioner that the Court below has failed to consider that the petitioner's previous counsel reported no instruction and in such circumstances, the Court below ought to have issued notice to the petitioner prior to dismissal of the suit for non-prosecution. It is further contended that the Court below completely overlooked by virtue of the order dismissing the condone delay application to set aside the order of dismissal of the suit, the entire right of the petitioner has been curtailed without any further remedy. It is further contended that the Court below ought to have afforded an opportunity for the petitioner, particularly, the suit was filed for declaration as well as for injunction to decide the rights of the parties. Hence, he prayed to allow the Civil Revision Petition.

5. The learned counsel appearing for the respondents herein submitted that the petition is not maintainable either in law or on facts and the same is liable to be dismissed. He further submitted that the petitioner has not explained delay of each and every day and this petition is filed with false averments. Therefore, the petitioner has to be dismissed with costs.

6. The revision petitioner/plaintiff has filed a petition in I.A. No.545 of 2014 in O.S. No. 72 of 2009 under Section 5 of Limitation Act to condone the delay of 733 days in filing the petition for restoration of suit which was dismissed on 01.06.2011. His counsel represented 'no instructions' and hence, the suit was dismissed for default. He came to know that the exparte decree on 16.06.2013 when a police complaint was lodged against him. Thereafter, he has filed a petition in I.A. No.545 of 2014 in O.S. No.72 of 2009 and the same was dismissed on 19.08.2015.

7. The learned counsel appearing for the respondents contended that it is the duty of the revision petitioner/plaintiff to know the stage of the case. The reason was also not accepted and there was an inordinate delay in filing the petition. Each and every delay should be explained. Even, as per averments in the petition he came to know the dismissal order on 16.06.2013. But, he filed this petition in April 2014 and he has not filed restoration petition immediately.

8. As per Judgment reported in 2015 (1)MWN (Civil) 125, inordinate delay without proper reason cannot be allowed. Therefore, the I Additional District Munsif, Tirunelveli has rightly dismissed the petition in I.A NO. 545 of 2014 in O.S. No. 72 of 2009. This Court has no valid reason to interfere with the order passed by the Court below.



9. In the result, the Civil Revision Petition stands dismissed and the order, dated 19.08.2015 passed in I.A. No.545 of 2014 in O.S. No.72 of 2009 on the file of the I Additional District Munsif Court, Tirunelveli is hereby confirmed. No Costs.

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Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1) The I Additional District Munsif,
Tirunelveli.

2) The Section Officer, V.R.Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-770[F] dated 11/01/2021)

+1 CC to Mr.S.P.MAHARAJAN, Advocate (SR-736[F] dated 11/01/2021)

Order made in
C.R.P. (MD)No.2506 of 2015 (NPD)
08.01.2021

KM (01.02.2021) 3P 6C