



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.09.2021
Delivered on : 26.10.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (NPD) (MD)No.1123 of 2018

1.Samiyathal
2.M.Selvamani

...Petitioners/Petitioners/Defendants 1 & 2

Vs.

C.M.Molaiyappa Goundar ... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair order and decretal order, passed in I.A.No.224 of 2017 in O.S.No.42 of 2014, dated 21.03.2018, on the file of the learned Principal District Judge, Karur.

For Petitioners : Mr.S.Muniyandi
For Respondent : Mr.G.Venugopal

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.224 of 2017 in O.S.No.42 of 2014, dated 21.03.2018, on the file of the Principal District Judge, Karur.

2.The revision petitioners are the defendants 1 and 2 in the suit and petitioners in the I.A. Petition, the respondent herein is the plaintiff in the suit and respondent in the I.A. petition.

3.Brief substance of the petition in I.A.No.224 of 2017 is as follows:

The respondent / plaintiff filed a suit in O.S.No.42 of 2014, for recovery of money and for permanent injunction. The second petitioner was looking after the case. The second petitioner was affected with jaundice and he was not able to move and the previous Advocate failed to inform the status of the case. On 03.10.2013, the petitioners / defendants 1 and 2 were called absent and were set ex-parte for the non filing of the written statement,. The non-filing of the written statement is not wilful or wanton. During the second week of May- 2017, a notice in E.P.No.45 of 2017 was served on the petitioners. After the receipt of notice, the first petitioner suffered stroke and was bedridden for a period of two weeks. The second petitioner being the only son had to attend to



the first petitioner and hence, they were not able to pursue the matter immediately. The second petitioner met their counsel in the first week of July - 2017 and came to know about the *exparte* decree. Therefore, there is a delay of 222 days in filing the *exparte* set aside petition.

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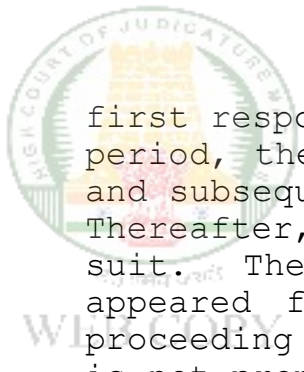
4. Brief substance of the counter of the respondent, in I.A.No.224 of 2017, is as follows:

The averment that the first petitioner on receipt of E.P notice, suffered a stroke and was bed ridden is not true. The petitioners had not produced any medical evidence to prove that the first petitioner suffered stroke and the period of treatment was not mentioned. The averment of the petitioner that the first petitioner was affected by jaundice, is false and the petitioners had not produced any document to prove that the first petitioner suffered from jaundice. After the filing the present suit, the petitioners filed a separate suit in O.S.No.344 of 2014 before the Additional District Munsif, Karur, for injunction against the present respondent and on 06.02.2015, that suit was dismissed for default. On 03.09.2015, the petitioners filed an I.A. petition to restore the suit in O.S.No.344 of 2014. This fact would prove that the petitioners were able to meet their Advocate during the year 2015 and the averment that the petitioners could not meet their Advocate from 20.01.2015 till June 2017 is false and that the application is liable to be dismissed.

5. After hearing both sides, the I.A. petition was dismissed by the trial Court. Against the same, the revision petitioners have approached this Court by way of this Revision.

6. On the side of the revision petitioners, it is stated that the trial Court failed to consider that the **second petitioner** was affected by jaundice, thereafter, the first petitioner was affected by paralyze attack and only for the reason, the petitioners were not able to be present before the Court. The interest claimed by the respondent is exorbitant. The respondent / plaintiff filed a suit only for recovery of interest and waived the principal amount. The trial Court failed to consider that the petitioners are willing to settle the amount. The property value is much higher than the interest fixed by the respondent and the E.P. proceedings has to be stayed. The trial Court failed to consider the provision under Order-9 Rule-13 of C.P.C. The petitioners are having valid grounds to succeed the suit and prayed the *exparte* order to be set aside.

7. On the side of the revision respondent, it is stated that the delay is 222 days. The defendants neither appeared in person nor through his counsel and the minors were represented by Court Guardian. The decree was passed only on merits. The petitioners claimed that the second respondent suffered jaundice and then, the



first respondent suffered from paralyze attack. During the relevant period, the petitioners filed a separate suit in O.S.No.344 of 2014 and subsequently, that suit was dismissed for default on 06.06.2015. Thereafter, a petition in I.A.No.70 of 2016 was filed to restore the suit. The petitioners were able to contact the same counsel, who appeared for them in the present suit and the petitioners were proceeding with the other suit and hence, the reason for the delay is not properly explained by the petitioners and prayed the petition to be dismissed.

8.On the side of the revision respondent, it is stated that the respondent / plaintiff is 81 years old and the revision petitioners are trying to drag on the case. A judgment of this Court reported in **2006-1-L.W.-790 [Rajaji V. R.Krishnaji]** is cited, wherein, it is stated that " Application to set aside exparte order filed after four months was dismissed by lower Court on the ground that the petition was filed beyond thirty day of the order and that the application to set aside the exparte order ought to have been filed within thirty days from the date of order and the application filed beyond thirty days is not maintainable"

9.A perusal of the records reveals that the trial Court judgment was not an exparte judgment, a Court guardian was appointed to represent the minors. Hence, there is no question of setting aside the exparte decree and the decree is passed only on merits. In the above circumstances, the petitioners are at liberty to file an appeal against the decree or to file a separate suit to set aside the decree.

10.Since, there is no question of setting aside the decree, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

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 Judge,
Karur.

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

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-32715[F] dated 26/10/2021)

Order made in
C.R.P (MD)No.1123 of 2018
26.10.2021

NA (CO)

GC/JC (12.11.2021) 4P 5C