



WEB COPY



C.R.P.No.585 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 23.11.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**C.R.P.No.585 of 2022**  
**and**  
**C.M.P.No.3059 of 2022**

1.Kamatchi Bai

2.Prakash Sah

3.Lingu Sah

4.Kotti Sah

... Petitioners

VS

S.Annamalai

... Respondent

**Prayer:** Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the Order and Decreetal dated 01.10.2021 passed in I.A.No.2 of 2019 in O.S.No.102 of 2015 by the learned Additional District Munsif at Kanchipuram and allow the above I.A.No.2 of 2019 in O.S.No.102 of 2015 by allowing this C.R.P.



WEB COPY



C.R.P.No.585 of 2022

For Petitioners : Mr.N.Chandra Sekar  
for N.Nagu Sah

For Respondent : Mr.V.Manoharan

### **ORDER**

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition to condone the delay of 274 days in filing the petition to set aside the *exparte* decree.

2. The respondent herein filed a suit for permanent injunction in O.S.No.102 of 2015. The said suit was decreed *exparte* on 30.09.2016 for the failure of the petitioners herein to file their written statement.

3. Thereafter, the petitioners herein filed a petition to set aside the *exparte* decree along with a petition to condone the delay of 274 days in filing the petition to set aside the *exparte* decree.

4. In the affidavit filed in support of the petition to condone the delay in filing the petition to set aside the *exparte* decree, the 4<sup>th</sup> petitioner herein had



C.R.P.No.585 of 2022

averred that at the relevant point of time, he was suffering from Jaundice and he had taken native treatment for the same and consequently, he was not in a position to contact his counsel and instruct him to conduct the case.

5. The said petition for condonation of the delay filed by the petitioners had been seriously opposed by the learned counsel for the respondent herein. The respondent in his counter had submitted that the 4<sup>th</sup> petitioner herein had not specifically mentioned the period of illness and the date on which he got recovered etc., to explain the delay and consequently, the explanation offered by the 4<sup>th</sup> petitioner herein should not be accepted.

6. Having heard both the parties, the Court below declined to accept the reason assigned by the 4<sup>th</sup> petitioner herein and dismissed the petition. Aggrieved by the same, the petitioners are before this Court.

7. Heard the arguments of the learned counsel for the petitioners and the respondent and perused the records.



C.R.P.No.585 of 2022

8. It is not in dispute that the petitioners herein were set *exparte* for their failure to file written statement on 30.09.2016 and thereafter, the suit was dismissed for default of the respondent/plaintiff on 07.02.2017. Thereafter, on application filed by the respondent/plaintiff, it was restored and subsequently, the suit was decree *exparte* on 23.11.2018.

9. In the affidavit filed in support of the petition to condone the delay, the 4<sup>th</sup> petitioner herein had stated that at the relevant point of time he was suffering from Jaundice and therefore, he could not meet his counsel to instruct him to conduct the case. It is also averred by the 4<sup>th</sup> petitioner herein that after recovery, on verification of records, he found that the suit was dismissed for default and consequently, he was under the *bona fide* belief that the suit was dismissed and he did not take any steps to meet his counsel.

10. It is settled law that in the matters involving condonation of delay, the Court has to take liberal approach, when there is a conflict between the substantive rights of the parties and the procedural law, the latter must give way to the former.



C.R.P.No.585 of 2022

11. In the case on hand, the 4<sup>th</sup> petitioner herein had filed an affidavit that at the relevant point of time, he was suffering from jaundice and he had taken native treatment for the same. Therefore, accepting the reason given by the 4<sup>th</sup> petitioner herein for condoning the delay, in the interest of justice, an opportunity should have been given to the petitioners to conduct the case.

12. Therefore, the order impugned in this revision is set aside on condition indicate below and the petition filed by the revision petitioners in I.A.No.2 of 2019 is allowed. The petition to condone the delay of 274 in filing the petition to set aside the *ex parte* decree is allowed on following conditions:-

(i) The learned counsel for the petitioners is directed to take Demand Draft for the value of Rs.5,000/- in the name of the respondent towards costs and handover the same to the learned counsel for the respondent, within a period of four weeks from the date of receipt of a copy of this order.

(ii) If the petitioners fails to pay the above said sum to the respondent within



C.R.P.No.585 of 2022

the period specified, the Civil Revision Petition shall stand automatically

WEB COPY

dismissed even without further reference to this Court.

(iii) If the petitioners pays the amount to the respondent as directed within the time stipulated, then the Court below is directed to take up the petition to set aside the *exparte* decree and dispose of it in accordance with law.

13. With the above directions, the Civil Revision Petition is disposed of.

No costs. Consequently, the connected civil miscellaneous petition is closed.

23.11.2022

Index : Yes / No

Speaking Order : Yes / No

dm



C.R.P.No.585 of 2022

To

WEB COPY The Additional District Munsif,  
Kanchipuram.



WEB COPY



C.R.P.No.585 of 2022

**S.SOUNTHAR, J.**

dm

**C.R.P.No.585 of 2022**

**23.11.2022**