



WEB COPY



CRP.No. 451 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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1.Indirani
Nallathambi (Deceased)
Ramar (Deceased)
2.Jayaprakash
3.Jothi
4.Rajesh

.. Petitioners

Versus

P. Usharani

.. Respondent

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.1118 of 2018 in O.S.No. 154 of 2011, dated 20.01.2020 on the file of I Additional District Munsif Court, Salem.

For Petitioners : Mr.R. Jayaprakash

For Respondent : Ms.Nirmala
For Mr.V.Sekar



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order passed in I.A.No.1118 of 2018 in O.S.No.154 of 2011, dated 20.01.2020 on the file of I Additional District Munsif Court, Salem.

2. The learned counsel for the petitioners/defendants contended that the petitioners appeared through their Advocate Mr.Ragothaman from the year 2011. Since their advocate not diligent in representing the matter, they were set ex-parte. The above suit for permanent injunction has been entrusted to Mr.Sankarapandiyan, Advocate, subsequently and he has not informed about the stage of the suit proceedings. Hence, there is a delay of 385 days in filing the petition under Order 9 Rule 13 of CPC., to set aside the ex-parte decree passed against them on 23.01.2017. Therefore, he prays to set aside the findings of the trial Court.

3. Per contra, the learned counsel for the respondent/plaintiff



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contended that no vakalath of Sankarapandiyan, Advocate, has been filed and hence, they could not take immediate steps to set aside the ex-parte decree in the suit proceedings and the reasons for condoning delay to set aside the ex-parte decree has not been properly explained and there is no documentary evidence to support their contention and the same is liable to be dismissed.

4. Heard both side and perused the records.

5. On perusal of the records, it is seen that the respondent/plaintiff has filed the suit in O.S.No.154 of 2011 on the file of District Munsif Court, Salem, for permanent injunction restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The second defendant contested the suit by way of filing written statement and the same was adopted by the defendants 1, 4 and 6. After perusing the records, the trial Court pronounced the ex-parte judgment and decree, dated 23.01.2017. Since the petitioners' previous advocate has joined in the judicial service and



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another advocate who looked after their case, the same was not informed to the petitioners about the stage of the suit proceedings. Thereafter, they met with Mr.Sankarapandiyan, Advocate, and got their case bundle and the same was found that the ex-parte judgment and decree have been passed in the suit proceedings against the petitioners/defendants on 23.01.2017. After knowing the same, the petitioners/defendants filed I.A.No.1118 of 2018 under Section 5 of the Limitation Act seeking to condone the delay of 385 days in filing the petition under Order 9 Rule 13 of the Code of Civil Procedure, praying to set aside the ex-parte judgment and decree dated 23.01.2017 pronounced against the petitioners. After perusing the entire records, the trial Court dismissed the said application without cost by order, dated 20.01.2020. Challenging the said order, the petitioners/defendants have filed this revision.

6. On a further perusal of the records, it reveals that the 4th petitioner was examined as PW1 on the side of the petitioners and no oral and documentary evidence have been adduced on either side. It is also seen that the trial Court has failed to consider the fact that the petitioners'



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previous advocate has joined in the judicial service and he had entrusted the case bundle to an Advocate, named, Mr.Sankarapandiyan, which was not informed to the petitioners. When the reason for the delay is duly explained, the trial Court ought to have condoned the delay and should have given an opportunity to the petitioners to contest the matter on merits, failing to do so, resulted in grave injustice to the petitioners/defendants. However, the trial Court ought to have seen that the fact that the previous counsel who was engaged by the petitioners had joined in the judicial service and the very same fact was not brought to the knowledge of the petitioners/defendants. Therefore, the trial Court had erroneously dismissed the said application.

7. Considering the ground raised by the revision petitioners/defendants for condoning the delay and since sufficient cause has been explained by the petitioners/defendants properly and the suit is of the year 2011, this Court is inclined to condone the delay of 385 days in filing the petition to set aside the ex-parte judgment and decree passed against the petitioners, dated 23.01.2017.



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8. Accordingly, the Civil Revision Petition is allowed. The order passed in I.A.No.1118 of 2018 in O.S.No. 154 of 2011, dated 20.01.2020 by the learned I Additional District Munsif, Salem, is set aside. Furthermore, the petitioners/defendants are directed to pay costs of **Rs.5,000/- [Rupees Five Thousand Only]** to Ms.Nirmala for Mr.V.Sekar, learned counsel for the respondent and **Rs.10,000/- [Rupees Ten Thousand Only]** to the respondent/plaintiff directly on or before 23.12.2022. There shall be no order as to costs.

14.12.2022

Speaking order / Non speaking order
msm

To

1. The I Additional District Munsif Court, Salem.
2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

msm

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