



C.R.P.No.1623 of 2020
and C.M.P.No.9841 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022
CORAM:

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1623 of 2020

and

C.M.P.No.9841 of 2020

Arunachala Padayachi (died)

1. Rajavel
2. Manonmani
3. Pavadai
4. Malarkodi
5. Kalaiselvi
6. Sundari
7. Sivakumar
8. Radhakrishnan
9. Masilamani
10. Sundaram

... Petitioners

Vs.

1. Viruthambal
2. Natesan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders passed in I.A. No.520/2017 in O.S. No.109/2003 dated 15.11.2019 on the file of the



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Additional District Munsif Court, Ulundurpet.

For Petitioner : Mr. T. Gandhi
For R1 & R2 : No appearance.

ORDER

The present Civil Revision Petition is filed against the fair and decreetal orders passed in I.A. No.520/2017 in O.S. No.109/2003 dated 15.11.2019 on the file of the Additional District Munsif Court, Ulundurpet.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court in the Original suit.

3. The civil revision petitioners are the plaintiffs in O.S.No.109/2003 on the file of the Additional District Munsif, Ulundurpet. They filed the suit for a permanent injunction against the defendants 1 to 10 in the suit. All the defendants were set *ex parte* and an *ex parte* decree was passed by the learned Additional District Munsif on 01.12.2016. Thereafter, the defendants 8 and 10 filed a petition to set aside the *ex parte* decree passed against them along with an application in I.A. No.520/2017 under Section 5 of the Limitation Act, to condone the delay



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of 114 days in filing the petition for setting aside the *ex parte* decree under Order IX Rule 13 CPC. The present revision petitioners/plaintiffs filed a counter and after full contest, the learned Additional District Munsif, allowed the said application on payment of cost of Rs.1,500/- to the plaintiffs vide her orders dated 15.11.2019. Aggrieved over the same, the present Civil Revision Petition is filed by the plaintiffs.

4. Heard Mr.T.Gandhi, learned counsel appearing for the revision petitioners. No representation on behalf of the respondents.

5. The specific contention of the learned counsel for the revision petitioners is that the suit was filed in the year 2003 and that 18 years have passed and therefore, setting aside the *ex parte* decree may not be necessary in the facts and circumstances of the present case.

6. The learned Additional District Munsif in her orders had held that the defendants 8 and 10 have shown sufficient cause for condoning the



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delay of 114 days in filing the petition under Order IX Rule 13 CPC.

Thus, the Additional District Munsif has exercised her discretionary powers and by no stretch of imagination, her findings can be said to be perverse.

7. In ***Sundar Gnanaolivu rep. by his power of attorney agent Mr. Rukmini vs. Rajendran Gnanavolivu, rep. by its power of attorney agent Veina Gnanavalivu***) reported in 2003 1 LW 585, the Division Bench of this Court held that

"15. On a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt to hood-wink the Court by the party concerned who has come forward with an application for condonation of delay, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delay that matters, but the attitude of the party which caused the delay. In



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other words when the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, the Court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered."

8. The learned counsel for the revision petitioners in all his fairness contended that the plaintiffs will not raise any objection for allowing the petition filed under Order IX Rule 13 CPC and the trial court may be directed to dispose of the suit in O.S. No.109/2003 within 3 months.

9. Recording the abovesaid submission of the learned counsel for the revision petitioners, the Additional District Munsif, Ulundurpet, is directed to dispose of the suit in O.S. No.109/2003 as expeditiously as possible.

10. In the result,

i. The Civil Revision Petition is dismissed. No costs. Consequently



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connected miscellaneous petition is dismissed.

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- ii. The fair and decreetal orders passed in I.A. No.520/2017 in O.S. No.109/2003 dated 15.11.2019 on the file of the Additional District Munsif Court, Ulundurpet, is upheld.
- iii. the learned Additional District Munsif, Ulundurpet, is directed to dispose of the suit in O.S. No.109/2003 as expeditiously as possible not later than one year from the date of receipt of a copy of this order.

31.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Additional District Munsif, Ulundurpet.
2. The Section Officer, VR Section, High Court, Madras.

R. HEMALATHA, J.
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