



A.No.1651 of 2022 in Tr. CS.No.61 of 2022

A.No.1651 of 2022 in
Tr. CS.No.61 of 2022

WEB COPY

P.VELMURUGAN, J.

This application has been filed to condone the delay of 479 days in filing an application to set aside the exparte decree dated 04.07.2018 passed in C.S.No.30 of 2012.

2. The applicants in their affidavit have stated the reason for not filing an application to set aside the exparte decree dated 04.07.2018 passed in CS.No.30 of 2012 that they are not aware of passing of the exparte decree, till 30.10.2018, when they received notice in the execution proceedings and after coming to know about this, they received back the case bundles from their counsel and for engaging a new counsel, such a delay is happened. It is also stated in the affidavit that no representation on their side in the suit is neither willful not wanton.

3. Learned counsel for the applicants reiterated the contents of the affidavit filed in support of this application. He would also submit that the applicants who are the defendants 1, 3 & 4 are willing to co-operate for the early disposal of the suit.



A.No.1651 of 2022 in Tr. CS.No.61 of 2022

4. Learned Senior Counsel for the respondents would submit that though the applicants who are the defendants 1, 3 & 4 have entered appearance through a counsel in the year 2013 itself, they evaded to file their written statement till 04.07.2018. The applicants / defendants 1, 3 & 4, neither after passing of exparte decree dated 04.07.2018 nor after receiving notice in the execution proceedings dated 29.10.2018, have chosen to file an application to set aside the exparte decree dated 04.07.2018 passed in CS.No.30 of 2012 immediately. In order to avoid the delivery of possession, he has filed this application and hence, this application has to be dismissed.

5. Heard and perused the records.

6. For want of territorial jurisdiction, without ordering the application to condone the delay in filing the application to set aside the exparte order, the suit was earlier transferred to the file of the City Civil Court and since the execution petition is pending before the Master, this Court is inclined to withdraw the suit from the file of City Civil Court, Chennai to the file of this Court.



A.No.1651 of 2022 in Tr. CS.No.61 of 2022

7. Admittedly, the suit summons served in the year 2013 itself and the applicants who are the defendants 1, 3 & 4 also entered appearance in the year 2013 itself. They have not filed the written statement till the exparte decree passed on 04.07.2018. They have also admitted that they received notice in the execution petition on 30.10.2018. Despite admitting that they received notice in the execution petition on 30.10.2018, they have not chosen to file an application to set aside the exparte decree dated 04.07.2018 till 2022. Therefore, this Court is of the considered view that the applicants have only an intention to postpone the delivery of possession and the reasons stated in the accompanying affidavit is not satisfied and the contention raised by the learned counsel for the applicants is also not satisfied.

8. As per CPC, the written statement has to be filed within 30 days or with the leave of the Court, within 90 days and as per the Original Side Rules, after receiving the summons, within the stipulated time mentioned in the summons, a defendant has to file the written statement. However, the applicants/defendants 1, 3 & 4 have neither followed the CPC nor followed the Original Side Rules. Unfortunately due to procedural lapse, though the



A.No.1651 of 2022 in Tr. CS.No.61 of 2022

case was pending from 2012 to 2018 and the exparte decree was passed on 04.07.2018, the applicants have filed an application to set aside the exparte decree dated 04.07.2018 with the application to condone the delay.

9. Though this Court is not satisfied with the reasons contained in the affidavit, since the decree is an exparte decree, in order to give opportunity to the applicants/defendants 1, 3 & 4, this Court is inclined to allow this application on payment of cost.

10. This application is allowed on condition that the applicants are directed to deposit a sum of Rs.2,50,000/- before the Registry to the credit of CS.No.30 of 2012 on or before 26.04.2022, failing which, the application shall stand automatically dismissed without any further reference.

11. Post the matter for compliance on 28.04.2022.

12.04.2022

nl



WEB COPY



A.No.1651 of 2022 in Tr. CS.No.61 of 2022

P.VELMURUGAN, J.

nl

A.No.1651 of 2022 in
Tr. CS.No.61 of 2022

12.04.2022