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C.R.P(NPD.)No.977 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2022

CORAM:

THE HONOURABLE Mr. JUSTICE R.SUBRAMANIAN

C.R.P.(NPD)No.977 of 2021 and
C.M.P.No.7834 of 2021

P.S.Gnanadoss @ Pappaiyan (died)

1.Elangovan

2.Udhasuriyan

3.Malar @ Malarkodi

4.Johnsirani

5.Tamilarasi

6.Chandra

... Petitioners

Vs.

Dhasaradhan

... Respondent

Prayer: Petition filed under Section 115 of the Civil Procedure Code praying to set aside the fair and decretal order dated 25.02.2021 passed in I.A.No.1 of 2020 in O.S.No.297 of 2004 on the file of the Principal District Munsif, Ambur, Vellore District.

For Petitioners : Mr.S.Sriram

For Respondent : Mr.P.A.Sudesh Kumar

ORDER

This revision is directed against the order dismissing the condone delay of 147 days in filing the petition to set aside the exparte decree that was passed in I.A.No.1 of 2020 in O.S.No.297 of 2004 dated 25.02.2021.



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2. The father of the petitioners viz., Gnanadoss was arrayed as a defendant in the said suit for declaration, recovery of possession of the second item and for injunctive reliefs. The said Gnanadoss had filed a suit in O.S.No.112 of 2003 for a permanent injunction which was pending on the file of the Additional District Munsif, Ambur. The suit in O.S.No.297 of 2004 which is subject matter of this revision was pending before the Principal District Munsif, Ambur. Gnanadoss, the original defendant in the suit filed transfer petition in Tr.O.P.No.7 of 2005 seeking transfer of this suit to the Additional District Munsif, Ambur to be tried along with O.S.No.112 of 2003. The said transfer petition was allowed and the suit was directed to be disposed of along with O.S.No.112 of 2003. Thereafter, the Additional District Munsif dismissed the suit in O.S.No.112 of 2003 for default and granted an exparte decree in O.S.No.297 of 2004. Applications for restoration of suit O.S.No.112 of 2003 as well as to set aside the exparte decree in O.S.No.297 of 2004 were filed by the deceased Gnanadoss and both the applications were dismissed. Though he did not file any appeal or revision as against the order dismissing the application to restore the suit in O.S.No: 112 of 2003, the deceased Gnanadoss filed C.M.A.No.1 of 2009 on



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the file of the Sub Court, Gudiyattam as against the order refusing to set aside the exparte decree. The said appeal came to be allowed and the exparte decree was set aside. Thereafter, Gnanadoss died and the defendants 3 to 7 were added as his legal representatives. Since they did not file a written statement, they were set exparte and the trial was proceeded with. When exparte decree came to be passed in O.S.No.297 of 2004 on 12.02.2019, the petitioners herein filed an application seeking to condone the delay of 147 days in filing the application to set aside the exparte decree. In the interregnum, the Additional District Munsif's Court, Ambur was abolished and all the cases pending before the said Court were transferred to the Principal District Munsif, Ambur. Hence, the application seeking condonation of delay was filed before the Principal District Munsif, Ambur. Since the exparte decree was granted by the Additional District Munsif, Ambur, the learned Principal District Munsif rejected the application on the ground that since the Court had been abolished, he had no jurisdiction to entertain the application. This order was challenged by the petitioners before this Court in C.R.P.(NPD).No.3440 of 2019. The said CRP came to be allowed on 27.11.2019 and the Principal District Munsif, Ambur was



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directed to dispose of the application on merits. Pursuant to the said order, the learned Principal District Munsif has now dismissed the application seeking condonation of delay of 147 days.

3. Mr.S.Sriram, learned counsel appearing for the petitioners would vehemently contend that the trial Court was not right in dismissing the application for condonation of delay of 147 days. Referring to the affidavit filed in support of the application, the learned counsel would contend that the petitioners have been diligently prosecuting the case and the delay is bona fide. He would submit that in view of the nature of the suit and the prayer sought for therein, the Court must have adopted pragmatic approach and should have condoned the delay.

4. Contending contra, Mr.P.A.Sudeshkumar, learned counsel appearing for the respondent would submit that the conduct of the petitioners would show that they did not deserve any indulgence from this Court. He would point out that there was already an exparte decree which was set aside in appeal. However, even thereafter the petitioners were not



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diligent in prosecution of the case. He would also point out that the suit for possession of the year 2004 is dragged on for almost 17 years now.

5. I have considered the submissions of the learned counsel appearing for the parties.

6. No doubt, as rightly pointed out by Mr.P.A.Sudesh Kumar, learned counsel for the respondent, the suit was filed in the year 2004 and it is now 17 years old. At the same time, the reason assigned for the delay should also be looked into. It is stated that the 7th petitioner, wife of the deceased Gnanadoss is aged about 70 years in 2019 and the reason assigned is that she has suffered a fracture. It is also stated that the other petitioners who are the sons of Gnanadoss are working elsewhere and the daughters are married and living their respective husbands. It is also stated that the 7th petitioner Mrs.Chandra has fallen down in the bathroom at K.G.F. while she was staying in her daughter's house and had suffered a fracture. The trial Court has however disbelieved the said reason on the ground that no medical records have been produced.



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7. The Hon'ble Supreme Court and this Court have been consistently holding that the Court must adopt liberal approach in matters of condonation of delay. Unless it is shown that there was some bad faith or lack of bona fides on the part of the litigants, the Court must not refuse to condone delay. In *University of Delhi Vs. Union of India and others (CIVIL APPEAL NOS. 9488-9489 OF 2019 dated 17.12.2019)*, the Hon'ble Supreme Court has held that the Court must adopt a liberal approach in matters of condonation of delay. The Hon'ble Supreme Court has cited with approval the earlier judgment in *Collector, Land Acquisition, Anantnag v. Katiji, reported in AIR 1987 SC 1353*.

8. In view of the above settled position of law, I do not think that the learned District Munsif was right in conducting a microscopic examination on the explanation offered for the delay, that too when the delay was about 147 days and therefore, I am unable to sustain the order of the learned District Munsif and consequently, the revision succeeds. The order of the learned District Munsif, Ambur is set aside.



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9. At this juncture, the learned counsel appearing for the respondent would submit that, the exparte decree itself could be set aside and the suit can be directed to be disposed of within a time frame.

10. In view of the statement made by the learned counsel for the respondent and in order to avoid further delay, exercising the power under Article 227 of the Constitution of India, the exparte decree granted in O.S.No.297 of 2004 will stand set aside. The suit is restored to file. The learned District Munsif, Ambur is directed to dispose of the suit in O.S.No.297 of 2004 within a period of six months from the date of receipt of a copy of this order and report copy of such disposal to this Court.

11. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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R.SUBRAMANIAN, J.

Sgl

To

The Principal District Munsif,
Ambur, Vellore District.

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