



C.R.P.(NPD).No.3218 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3218 of 2016

and

C.M.P.Nos.16304 of 2016 & 7627 of 2017

1.Vasugi

2.Shanthi @ Leena

.. Petitioners

Vs.

1.Subadra Ammal

2.M.Sivakumar

3.Veerabalan,

Rep. By Power Agent, M.Sivakumar

4.P.Malarkodi,

Rep. By Power Agent M.Sivakumar

5.Divya

6.Supriya

.. Respondents

*(3rd petitioner transposed to 6th respondent vide
Court order dated 17.11.2021 made in C.M.P.No.13422
of 2021 in C.R.P.No.3218 of 2016)*



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Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 26.07.2016 made in I.A.No.432 of 2016 in O.S.No.332 of 2004 on the file of the Principal District Munsif Court, (Motor Accident Claims Tribunal), Cuddalore.

For Petitioners : M/s.R.Meenal

For Respondents : Mr.P.Dinesh Kumar (For RR1 to 4)
for M/s.D.Ravichander

No appearance (For R6)

ORDER

(The matter is heard through 'video conferencing')

This Civil Revision Petition is filed against the judgment and award dated 26.07.2016 made in I.A.No.432 of 2016 in O.S.No.332 of 2004 on the file of the Principal District Munsif Court, (Motor Accident Claims Tribunal), Cuddalore.

2.The petitioners are defendants 2 and 3 in O.S.No.332 of 2004 on the file of the Principal District Munsif Court, (Motor Accident Claims



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Tribunal), Cuddalore. Originally, the respondents 1 to 4 filed the said suit against one V.Durai for permanent injunction restraining him from interfering with their peaceful possession and enjoyment of the suit properties. Pending suit, the said V.Durai died and the petitioners and respondents 5 and 6 who are his legal heirs were brought on record as defendants 2 to 5 respectively in the suit. The suit was posted for final hearing. P.W.1 was examined. The counsel for the petitioners and other defendants did not cross examine P.W.1 and reported no instructions. Again, Court issued notice to the petitioners and other defendants. Notice was served on the 1st petitioner and notice on the 2nd petitioner and respondents 5 and 6 were served by substitute of service. In spite of service of notice, the petitioners and others did not appear and contest the suit. The learned Judge set the petitioners and other defendants as *ex parte* and passed *ex parte* decree on 15.10.2014. The petitioners and 6th respondent filed I.A.No.432 of 2016 under Section 5 of the Limitation Act to condone the delay of 470 days in filing the petition to set aside the *ex parte* decree passed against the petitioners and 6th respondent on 15.10.2014.



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3. According to the petitioners, the 1st petitioner was suffering from Jaundice and was taking native treatment. She could not move from bed and contact the Advocate. After recovery, when she contacted the Advocate, he informed that ex parte decree was passed against the petitioners on 15.10.2014. The petitioners have good case on merits and they have not been careless or negligent. If ex parte decree is not set aside, they will be put to irreparable loss and hardship and prayed for setting aside the ex parte decree.

4. The respondents 1 to 4 did not file counter and they were set ex parte. When the application was taken up for hearing, there was no representation for both the petitioners and respondents and they were set ex parte. Considering the averments in the affidavit and case diary, the learned Judge dismissed the application, holding that the reason given by the petitioners are not true and the petition is filed only to drag on the case.



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5. Against the said order of dismissal dated 26.07.2016 made in I.A.No.432 of 2016 in O.S.No.332 of 2004, the petitioners have come out with the present Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioners as well as the respondents 1 to 4 and perused the entire materials available on record.

7. Though notice has been served on the 6th respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

8. From the materials on record, it is seen that the petitioners have filed I.A.No.432 2016 to condone the delay of 470 days in filing the petition to set aside the exparte decree dated 15.10.2014. It is the case of the petitioners that the 1st petitioner was suffering from Jaundice, taking native treatment, was bedridden and could not contact her Advocate. When she recovered and contacted her Advocate, he informed that



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exparte decree was passed on 15.10.2014 in the suit, against the petitioners. The affidavit filed by the petitioners in support of the present application is bereft of necessary particulars. The 1st petitioner has not stated from when she was suffering from Jaundice and when she recovered from illness. Further, the petitioners have not stated when the 1st petitioner contacted the Advocate and also have not stated as to why the 2nd petitioner and 6th respondent did not contact their Advocate to give instructions to conduct the trial. Even after receipt of notice by the 1st respondent about no instructions reported by their Advocate, the petitioners failed to contact the Advocate or engage new counsel to conduct their case. The learned Judge has considered the above materials along with the case diary and by giving cogent and valid reasons, dismissed the application.

9.The learned counsel appearing for the petitioners filed written submissions and stated that the Civil Revision Petition may be allowed on heavy cost. The said contention is not acceptable in the facts and circumstances of the case. From the written arguments filed by the



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petitioners, it is seen that the petitioners were set exparte earlier in the year 2010 and subsequently, the said exparte order was set aside. Inspite of the same, the petitioners are not diligent enough to conduct the case and put forth their defence. The suit is of the year 2004. The intention of the petitioners is only to drag on the proceedings and it is not bonafide. Hence, there is no reason to interfere with the order of the learned Judge warranting interference by this Court.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.01.2022

Index :: Yes/No
gsa

To

The Principal District Munsif,
(Motor Accident Claims Tribunal),
Cuddalore.



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V.M.VELUMANI, J.

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