



C.R.P.(PD)No.3424 of 2016
and CMP.No.17406 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3424 of 2016
and C.M.P.No.17406 of 2016

New Star Vegetables,
a Partnership Firm,
Registered under the Indian Partnership Act 1932,
Having its Place of Business and office at
D.No.10/159 (Stall), UMC Market,
Udhagamandalam,
Rep by its Partner N.Raja,
S/o.Late.Nanjundian, A. Hindu,
Aged about 42 years, Residing at Door No.42,
Jognee Mastery Lane,
Udhagamandalam, The Niligiris.

.. Petitioner

Vs.

1.Shanthi

2.S.Moorthy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decretal order dated 01.09.2016



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made in I.A.No.269 of 2016 in O.S.No.112 of 2013 on the file of the
District Munsif Court, Udhagamandalam.

For Petitioner : Mr.S.Elambharathi

For R1 : Mr.J.Franklin

For R2 : Notice D/w

ORDER

(The matter is heard through “Video-conferencing”)

Civil Revision Petition is filed against the fair and decretal order dated 01.09.2016 made in I.A.No.269 of 2016 in O.S.No.112 of 2013 on the file of the District Munsif Court, Udhagamandalam.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.



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4.According to the 1st respondent, due to mis-understanding with 1st respondent, her Advocate did not want to conduct the case and he has written a letter to her son that he is going to report no instructions on 15.10.2014, the next hearing date of the case. The 1st respondent was taking treatment at Coimbatore for her nervous problem and she could not appear before the trial Court on 15.10.2014. She could not recover from her illness and continued her treatment at Coimbatore. She was bed ridden till 25.06.2015, then returned to Ooty, engaged new Advocate to conduct the case and found that she was set exparte and exparte decree



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was passed on 27.03.2015. Non-appearance of 1st respondent is only due to her illness and prayed for condoning the delay and allowing the said application.

5.The petitioner filed counter affidavit and denied all the averments made in the affidavit and stated that the 1st respondent was in Ooty, she has not taken any treatment at Coimbatore. Though she was given sufficient opportunity to defend the case, she failed to appear before the trial Court hence she was set exparte on 22.12.2014 and exparte decree was passed on 27.03.2015. The 1st respondent has not explained each and every day's delay and not produced the document to show that she was taking treatment at Coimbatore and prayed for dismissal of the said application.

6.The learned Judge considering the averments in the affidavit, counter affidavit and the relief sought for in the suit, allowed the I.A. on payment of cost of Rs.500/- to the petitioner in order to give opportunity to the 1st respondent to defend the case on merits.



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WEB COPY 7. Against the said fair and decretal order dated 01.09.2016 made in I.A.No.269 of 2016 in O.S.No.112 of 2013, the petitioner has come out with the present Civil Revision Petition.

8. In the suit filed by the petitioner for permanent injunction against the respondents, they remained exparte and exparte decree was passed on 27.03.2015. The 1st respondent filed present I.A.No.269 of 2016 to condone the delay of 95 days in filing the petition to set aside the exparte decree. According to the 1st respondent, her previous counsel reported no instructions, due to mis-understanding with her. The 1st respondent could not attend the Court earlier as she was taking treatment at Coimbatore. The learned Judge considering the above, condoned the delay on payment of cost. The contention of the learned counsel appearing for the petitioner is that the learned Judge even though held that the 1st respondent failed to give valid reason explaining each and every day's delay, erroneously allowed the I.A.



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9.From the materials on record, it is seen that the suit is for permanent injunction and according to the 1st respondent, due to mis-understanding with her, her earlier counsel reported no instructions. It is well settled that a party should not be shut down at the threshold itself, but must be given an opportunity to put forth their case on merits. It is also well settled that the length of delay is not a criteria, but the reason given by the party must be valid, acceptable and sufficient. The intention of the party must be bonafide. In the present case, considering the relief sought for in the suit and to give opportunity to the 1st respondent to put forth the case on merits, the learned Judge condoned the delay on payment of cost of Rs.500/- payable to the petitioner. There is no error in the said order of the learned Judge warranting interference by this Court.

10.For the above reasons, the Civil Revision Petition is dismissed. The suit is of the year 2013. The 1st respondent is directed to file written statement within four weeks from the date of receipt of a copy of this



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order. The learned Judge is directed to take the written statement on file and to dispose the suit in O.S.No.112 of 2013 as expeditiously as possible, in any event, within six months from the date of filing of the written statement. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
jas/kj

To

The District Munsiff,
Udhagamandalam.



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V.M.VELUMANI,J.

Kj

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