



C.R.P.No.2608 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.2608 of 2022
and C.M.P.No.13396 of 2022

GanapthiGounder (Died)
Lakshmiammal (Died)
Rajendran (Died)

1. Selvaraj
2. Senthilkumar
3. Santhamani

.. Petitioners

Vs.

1. Arunachala Gounder
2. Subramaniam
3. Velumani
4. Murugesan @ Kumaresan
5. Saraswathi

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code pleaded to set aside the order dated 22.06.2022 made in I.A.No.01 of 2019 in O.S.No.920 of 2017 on the file of the District Munsif Court, Sulur.

For Petitioners : M/s.R.Vigneswari
for M.Guruprasad

For Respondents : M/s.P.Tamilavel for R1 to R5

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below allowing the petition filed by the respondents to condone the delay of 48 days in filing the petition to set aside the exparte decree dated 27.06.2018.



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WEB COP 2. The petitioners herein filed a suit for partition and mandatory injunction against the respondents. Owing to non appearance of the respondents they were set exparte on 08.06.2018. Subsequently, an exparte decree was passed on 27.06.2018. The respondents herein had filed an application to set aside the exparte decreed on 14.09.2018 along with the petition to condone the delay of 48 days in filing said application. In support of the petition to condone the delay, the respondents filed an affidavit and averred that the second respondent who was in charge of conducting the suit was suffering from Jaundice at the relevant time and hence, he was prevented from contacting his counsel and giving suitable instructions to conduct the case. Having satisfied with the reason assigned by the respondents the Court below had condoned the delay on payment of cost of Rs.1000/- to the petitioners herein. Aggrieved by the said order, the present revision petition has been filed before this court.

3. The learned counsel for the petitioners submitted that the suit is of the year 1997, this is second time the respondents were set exparte and hence, the Court below ought not to have exercised its discretion in favour of condonation of delay. It was also submitted that the reason assigned by the respondents for their failure to appear before the Court below at the relevant point of time was

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not substantiated by any evidence.



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4. The learned counsel for the respondents tried to sustain the order passed by the Court below by submitting due to Jaundice, the second respondent who was in charge of conducting the case was not able to contact his counsel and give suitable instructions for cross examination of PW1 and hence, an exparte decree came to be passed.

5. Heard the learned counsel for the petitioners and the respondents and perused the materials available on record.

6. The suit is for relief of partition. In the affidavit filed in support of the condone delay petition, the second respondent had stated that at the relevant point of time, he was affected by Jaundice and hence, he was unable to give suitable instructions to conduct the case. By taking into consideration the facts and circumstances of the case, the Court below exercised its discretion in favour of the respondent and condoned the delay.

7. This Court does not find any reason to interfere with the exercise of discretion by the Court below. Having regard to the fact that this is second time the respondent had allowed the suit to be decreed exparte, this Court feels it is



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as a condition to condone the delay in seeking to set aside the ex parte decree.

Therefore, the order passed by the Court below is modified to the extent of cost imposed on the respondents. The I.A.No. 1 of 2019 filed by the respondents to condone the delay in seeking set aside the ex parte decree stands allowed on payment of Rs.10,000/- to the revision petitioners within a period of four (4) weeks from the date of receipt of a copy of this order. In case the respondents fail to comply with the condition imposed by this Court, the Civil Revision Petition stands dismissed automatically even without any further reference to this Court.

8. With the above direction, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No

Internet : Yes / No

To

The District Munsif Court, Sulur.



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