

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****Reserved on : 14.12.2021****Pronounced on : 24.01.2022****CORAM:****THE HONOURABLE MRS. JUSTICE S. KANNAMMAL**

CRP.(NPD)No. 2641 of 2021

and

C.M.P.No. 19563 of 2021

1.M.Chandra
2.S.Suganya
3.S.Saranya
4.S.Sathiya

...Petitioners

Versus

1.Sevathal @ Perumakkal
2.P.Subramani
3.P.Jayaseelan
4.P.Alangarammal

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order in I.A.No.632 of 2012 in O.S.No.95 of 2012, dated 04.08.2020 on the file of Principal Subordinate Court, Krishnagiri.

For Petitioners : Mr. S. Saravanakumar
For Respondents : Mr. K. Vijaysundar

ORDER

This Civil Revision Petition is filed by the petitioners/defendants in

O.S.No.95 of 2012 on the file of Principal Subordinate Judge, Krishnagiri.



The respondents in this revision are the plaintiffs in the original suit. They have instituted the suit for declaration and permanent injunction. Even though notice in the suit was served, the petitioners/defendants did not contest it, with the result they were called absent and set ex-parte. Ultimately, an ex-parte judgment and decree came to be passed on 02.07.2012. On coming to know about the ex-parte decree, the defendants filed an application to set aside the ex-parte decree by filing an application in I.A.No.632 of 2012 in O.S.No. 95 of 2012 with a delay of 84 days in filing the application to set aside the exparte decree passed in the suit. The trial court refused to condone the delay and dismissed the application on 12.08.2013.

2. As against the order dated 12.08.2013, the petitioners/defendants have earlier filed CRP. No. 4322 of 2013 before this Court and this Court, by order dated 20.09.2017 set aside the order passed by the trial court and remanded the matter back to consider I.A.No.632 of 2012 afresh. Pursuant to the same, the I.A.No.632 of 2012 was taken up by the trial Court.



3. Before the trial Court, it was contended on behalf of the revision petitioners/defendants that the delay in filing the application to set aside the ex-parte decree is neither willful nor wanton. Further, the delay in filing the application to set aside the exparte decree is not enormous and considering the same, the revision petitioners/defendants may be given one more opportunity to contest the suit. Therefore, it was prayed by the defendants before the trial Court to leniently consider their application for condoning the delay of 94 days in filing the application to set aside the ex-parte decree dated 28.06.2012.

4. The respondents/plaintiffs have filed the counter in I.A.No.632 of 2012 contending that the reasons assigned by the defendants for condoning the delay of 94 days is bald and vague. The defendants have failed to explain each and every day delay. The application has been filed to drag on the suit. The petitioners/defendants have filed the present application casually without any convincing reason to condone the delay. The petition was filed by the defendants only to harass the plaintiffs and to prolong the litigation. Therefore, they prayed for dismissal of the application.



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5. The trial Court considering the submissions made on both sides, dismissed the I.A.No.632 of 2012 by order dated 04.08.2020. Aggrieved by the same, the petitioners/defendants have come forward with the present Civil Revision Petition.

6. The learned counsel for the revision petitioners would contend that the revision petitioners have sufficiently explained the reasons for the delay. According to him, the delay of 94 days in filing the application to set aside the ex-parte decree is not inordinate. The trial Court ought to have condoned the delay without adopting technicalities to oust the defendants from defending the suit filed by the respondents/plaintiffs. The revision petitioners have to be given an opportunity to contest the suit filed by the respondents/plaintiffs on merits.

7. The learned counsel for the petitioners/defendants heavily placed on reliance the off quoted decisions of the Hon'ble Supreme Court in **Balakrishnan v. M.Krishnamurthy** reported in **1998 (7) SCC 123** and contended that for condoning the delay, the Courts have been given a discretionary power to render substantial justice. It is settled proposition of



law that length of delay is not a matter to be considered but the reasons assigned for condoning the delay. The Court below while considering an application under Section 5 of the limitation Act is expected to adopt a lenient view for setting aside the ex-parte decree as also condoning the delay. The Court is given a discretion to either accept the reasons or to reject it. However, what is important for consideration is the attitude, conduct and the plausible explanation given by the applicant. In the present case, without considering the above parameters laid down by the Honorable Supreme Court, the trial court exercised its discretion to oust the defendants from the litigation which resulted in miscarriage of justice.

8. Per contra, the learned counsel appearing for the respondents /plaintiffs would vehemently contend that the application for condonation of delay has been casually filed by the petitioners/defendants without assigning any strong reasons for condoning the delay. In other words, there is no satisfactory explanation offered by the petitioners/defendants for condoning the delay and taking note of the same, the trial Court has rightly rejected the application filed by them. It is the contention of the respondents/plaintiffs that a straight jacket formula cannot be adopted in the matter of condoning the delay. A discretion is vested with the Court to



consider the application for condonation of delay. Once if it is found that the discretion exercised by the trial Court is proper and reasonable, then, this Court need not interfere with the same. In support of his contention, the learned counsel for the respondents/plaintiffs placed reliance on the decisions in (i) *N. Asokan and Another v. J.K. Sivarao* reported in **1999 M.L.J. (Supp.) 18** (ii) *Sankaralingam and Another v. V.Rahuraman* reported in **2002 (3) CTC 769** and (iii) *Reliance Industries Limited, represented by Reliance Consultancy Services Limited v. M. Rajkumari* reported in **2002 (1) CTC 157** and (iv) *Union of India and Others v. Nripen Sarma* reported in **AIR 2011 SCC 1237 : 2013 (4) SCC 57**. These decisions have been relied on to drive home the point that the revision petitioners/defendants have not sufficiently explained the reasons for the delay in filing the application. Therefore, the discretion exercised by the trial Court is proper and he prayed for dismissal of this revision petition.

9. Heard the learned counsel for both sides and perused the materials placed on record.

10. This is the second revision petition filed by the petitioners/defendants before this Court. Earlier, they have filed a petition



in CRP.No.4322 of 2013 before this Court challenging the order dismissing the application filed by them to condone the delay of 84 days in filing the application to set aside the exparte decree. This Court remanded the matter back to the trial court for afresh consideration. The order passed by this Court in CRP.No.4322 of 2013 reads as follows:-

"6. The trial Court has passed one line order in I.A.No.632 of 2006 which reads as follows:-

"Petition be condone the delay of 84 days is filing the petition to set aside the exparte decree passed on 28.06.2012.

Orders pronounced. Petition is dismissed. No costs."

7. In view of the discussion made above and considering the facts and circumstances of this case, this Court is of the view that it is a fit case for remanding back to the matter to the concerned Court for fresh consideration and disposal and the order of the trial Court is liable to be set aside and the same is hereby set aside."

11. Pursuant to the order passed by this Court on 20.09.2017 in

CRP.No.4322 of 2013, the trial Court once again dismissed the application



filed under Section 5 of the Limitation Act to condone the delay of 94 days in filing application to set aside the exparte decree, with the following observations:-

"Keeping the ratio of the Hon'ble High Court in mind, let this Court now proceed to consider as to whether sufficient cause is shown by the petitioners. Firstly, I want to point out the defective affidavit filed on behalf of petitioners. The affidavit filed along with the application was drafted in the name of the first petitioner, namely, Chandra. But the affidavit was signed by the second petitioner, namely, Poongodi. So the affidavit filed on behalf of the petitioners itself has inherent defect and leads to a confusion as to who has assigned the reason for the delay. Moreover, it is stated in the affidavit that the suit was posted for filing written statement on 22.06.2012, the second petitioner was unable to contact her advocate and file the vakalath and written statement. So the petitioner has just stated her inability to contact her counsel on the relevant date, but not stated under what circumstance, she could not contact his counsel. Therefore, just expressing the inability of the petitioner is not a cause much less sufficient cause as contemplated under Section 5 of the Limitation Act. The second petitioner should have



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given the circumstance for the same under which she could not contact his advocate. Therefore, the petitioners failed to give any reason or explanation for the delay. So, this Court finds no sufficient cause for condoning the delay. Therefore, the application is devoid of merits. Hence, the application is liable to be dismissed. Accordingly, the point is answered."

12. It is evident that the trial Court has pointed out some defects in the affidavit filed by the petitioners. The trial Court, in the considered view of this Court, has failed to appreciate the explanation given by the petitioners for condoning the delay. In fact, this Court finds that along with the application for condoning the delay a written statement was also filed by the second respondent. On perusal of the written statement, this Court is of the view that the revision petitioners have raised substantial defence and the same are required to be considered by the trial Court during trial.

13. As regards the reasons for condoning the delay, it is true that the reasons assigned by the revision petitioners are not elaborate, rather it was simply stated that the suit was posted for hearing on 22.06.2012 on



which date, the first defendant, namely Mrs.Chandra could not meet her counsel, file vakalath and written statement. In fact, this Court finds that the plaint was filed on 16.04.2012. It appears that on 20.07.2012, the suit was posted for hearing. Substantially, on 28.06.2012, when the suit was taken up for hearing there was no representation for the defendants and therefore, they were set exparte. In other words, after the plaint was filed, the suit was posted for hearing twice and thereafter, the defendants were set exparte due to their non appearance or for not filing written statement. In such circumstances, no prejudice will be caused to the plaintiffs if the defendants are given an opportunity to contest the suit. It is not as if the suit was periodically adjourned and the defendants have adopted dilatory tactics in defending the suit. The fact remains that now the written statement has been filed along with the application to condone the delay. Therefore, taking note of the above attendant facts and circumstances of the case, this Court is of the view that the defendants need not be ousted from the litigation and they have to given one more opportunity to contest the suit. Therefore, the order of the trial Court is liable to be set aside and the application for condoning the delay of 84 days has to be allowed.



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14. In the result, the order dated 04.08.2020 passed in I.A.No.632 of 2012 in O.S.No.95 of 2012 is set aside. The Civil Revision Petition is allowed. No costs. Resultantly, I.A. No. 632 of 2012 in O.S. No. 95 of 2012 stands allowed. Consequently, connected Miscellaneous Petition is also closed.

.01.2022

Index : Yes / No
Speaking Order : Yes/ No
msm

To

The Principal Subordinate Judge, Krishnagiri.



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S. KANNAMMAL. J

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