



CRP. No.3548 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP. No.3548 of 2022

and

CMP.No.18879 of 2022

1.B.N.Jayanna

2. J.Sandhya

3.J.Saradh Kumar

... Petitioners

Vs.

J.Kumar @ Premkumar

... Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Order dated 02.12.2021 passed by the learned Principal Subordinate Court, Hosur, in I.A.No.2 of 2021 in OS.No.133 of 2009.

For Petitioners : Mr.B.K.Sreenivasan

ORDER

This Civil Revision Petition is filed challenging the order passed by the court below dismissing the petition to condone the delay of 2350 days in filing the petition to set aside the ex parte preliminary decree passed against the petitioners.



2. The respondent herein who is the son of the first petitioner and step brother of petitioners 2 and 3 filed a suit for partition in O.S.No.133 of 2009 on the file of the Principal Sub-Court, Hosur. An ex parte decree was passed against the petitioners for the failure to appear before the court below on 09.03.2015. Thereafter, the petitioner has filed a petition to set aside the ex parte decree along with a petition to condone the delay of 2350 days in filing the petition to set aside the ex parte decree on 13.09.2021.

3. In the affidavit filed in support of the petition to condone the delay of 2350 days, the petitioners had averred that after receipt of notice from the court in the original suit, they had engaged an advocate and filed a written statement. In the affidavit sworn by the first petitioner, it was stated by him that due to his old age and illness like rheumatic arthritis and jaundice, he was not able to contact his counsel and all along he had been under the impression that the suit was pending. It was further stated that he received notice from the court in final decree proceedings in IA.No.151 of 2018. After receipt of notice in final decree proceedings in the year 2018, he acquired knowledge that an ex parte decree was passed against him on 09.03.2015. It is also stated in the affidavit that he met another counsel and



engaged him in the final decree proceedings for filing vakalat on 26.06.2018. It was further stated that thereafter he was affected with some illness and therefore he was not able to contact his counsel. It was also stated that after some time there was covid outbreak. Therefore they could not contact the counsel and finally the petition for setting aside the ex parte decree was filed on 13.09.2021

4. The court below not satisfied with the reasoning given by the petitioner for condoning the delay of 2350 days dismissed the same and aggrieved by the same, the petitioners are before this court.

5. The learned counsel for the petitioners submitted that due to illness of the first petitioner, he was unable to contact his counsel and take steps to set aside the ex parte decree within the time limit. The learned counsel also relied on the judgment of the Apex Court in **CDJ 2018 SC 285** reported in **Ummer Vs. Pottengal Subida & Others** for the proposition that while considering the petition for condoning the delay, the court has to take a liberal view.



6. I have heard the learned counsel for the petitioners and perused the typed set of papers.

7. It is seen from the records that an ex parte preliminary decree for partition was passed against the petitioners as early as on 09.03.2015. Though there are three petitioners, the first petitioner alone filed affidavit in support of petition for condonation of delay and had averred that he was suffering some kind of illness at that relevant point of time. There is no explanation why the other petitioners have not taken any steps to contact the counsel. In his affidavit, the first petitioner submitted that he was suffering from rheumatic arthritis and jaundice and therefore, he was not in a position to contact the counsel and enquire about the status of the case. The ex parte preliminary decree was passed on 09.03.2015. Even according to the affidavit filed by the first petitioner, he received notice in the final decree proceedings in IA.No.151 of 2018, in the year 2018 itself and he engaged a different counsel by filing vakalat on 26.06.2018. However, the petition to set aside the ex parte preliminary decree was filed only on 13.09.2021 nearly after three years. Absolutely there is no justification for the petitioners to wait for nearly three years to file a petition to set aside the ex



parte decree after receipt of notice in the final decree proceedings. Though the petitioners made a vague allegation regarding the old age ailments in the affidavit, he has not produced any material before the court below to show that he was really suffering from rheumatic arthritis and jaundice.

8. The petitioners also tries to explain the delay by taking shelter under outbreak of covid in their affidavit. It is a common knowledge that covid outbreak had taken place only in the middle of March 2020. However, in the case on hand, the notice was received by the first petitioner in the final decree proceedings in the year 2018 and he had engaged a counsel in the final decree petition on 26.06.2018. Therefore, the petitioners cannot point out the covid outbreak and try to explain the delay from 26.06.2018 to 13.09.2021. In the absence of any material to support the vague allegation of illness in the affidavit filed by the first petitioner, this court cannot come to the conclusion that the petitioners have made out a sufficient cause for condoning the inordinate delay of 2350 days. In the order impugned in the revision, the court below has observed that in the final decree petition, the petitioners were again set ex parte for their failure to file counter and thereafter the Advocate Commissioner was appointed to measure the suit



property to suggest the modes of division. It is observed by the court below that when the Advocate Commissioner visited the property with the Surveyor, he had been obstructed by the petitioners from measuring the property. It was also recorded that the petitioners used unparliamentary words and quarrelled with the Advocate Commissioner.

9. Under such circumstances, in the absence of any material to substantiate the vague allegation of the petitioners, I do not find any reason to condone the inordinate delay. Hence, I do not see any irregularity or illegality in the order passed by the court below and consequently, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2022

(½)

Index : Yes/No

Internet : Yes/No

gv



WEB COPY



CRP. No.3548 of 2022

S.SOUNTHAR.,J.
Gv

To

The Principal Subordinate Court,

Hosur.

CRP. No.3548 of 2022
and
CMP.No.18879 of 2022

08.11.2022
(1/2)