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CRP.No.3559 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2022

PRONOUNCED ON : 19.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.3559 of 2017
and CMP.No.16449 of 2017

1.Ellammal
2.Nagarajan
3.Ravi
4.Sumathi
5.Shanthi

... Petitioners/
Respondents 2 to 6/Plaintiffs

Vs.

1.M.Ramasamy Reddy
2.Ramakrishnan
3.Venugopal
4.Chinnappan

..Respondents
Petitioners/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 10.03.2017 in I.A.No.63 of 2016 in O.S.No.67 of 2004 on the file of District Munsif Court, Mettur.



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For Petitioners : Mr.V.Sekar

For Respondents : Mr.R.Subramanian

ORDER

This Civil Revision Petition has been filed against the order dated 10.03.2017 passed in I.A.No.63 of 2016 in O.S.No.67 of 2004 on the file of District Munsif Court, Mettur.

2.Facts leading to filing of this Civil Revision Petition are as follows:-

The revision petitioners are the plaintiffs in the suit. The suit is for permanent injunction. After the commencement of the trial, the respondents/defendants did not appear before the trial court. Hence, they were set exparte and an exparte decree was passed on 11.01.2010. Against the said exparte decree, the defendants 1 to 4 filed IA.63 of 2016 under Section 5 of Limitation Act to condone the delay of 1757 days in filing the said application. In the said



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application, it has been stated that they filed the written statement in the suit. It is stated that the 1st defendant has purchased the suit property from the 5th defendant for sale consideration, however, without looking into those documents, the plaintiffs filed the suit and at the time of pendency of the suit, through Panchayat, a compromise has been reached between the plaintiffs, 1st defendant and other defendants. However, contrary to the said compromise, the plaintiffs got exparte decree in their favour. So, the defendants sought to condone the delay in filing the petition to set aside the exparte decree.

3. The plaintiffs herein opposed the said I.A., by stating that in order to circumvent the reasons for the long delay of 1757 days, the defendants have come forward with the allegations that compromise talks taken place, which has no basis.

4. The learned Judge, on a finding that there would have been some compromise between the parties during 2009 and on assumption



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that some of the relatives of P.W.2 are holding high position in the village, condoned the delay of 1757 days in filing the petition to set aside the exparte decree.

5. The learned counsel for the petitioners has contended that the court below was wrong in holding that the plaintiffs have obtained the exparte decree suppressing the factum of compromise among the parties, but the learned Judge failed to consider that the defendants had not established their stand of such compromise with acceptable evidence and that too after a long delay. It is further contended that subsequent suit in O.S.No.273 of 2014 for declaration has been filed by the defendants and in order to merge the cause of action, the defendants filed I.A. to condone the delay in filing the petition to set aside the exparte decree. The learned counsel in support of his contention that the court has to adopt the pragmatic approach while exercising its discretion to condone the delay, has relied on the following Rulings of this court:-

1.CDJ 2019 MHC 815 [P.Kumarasamy Vs. S.Kandasamy and another]



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2.CDJ 2019 MHC 5979 [M.S.Rathna Kumar Vs Trilokchand]

3.CDJ 2018 MHC 5574. [Leela Vs. V.R.Asha]

6. On the other hand, the learned counsel for the defendants/respondents would submit that the 1st defendant is in possession and enjoyment of the suit property and he purchased the said properties from the 5th defendant. The defendants also filed another suit and that during the proceedings, compromise talks were held and the plaintiffs as per compromise, accepted to withdraw the case and so the defendants did not contact their counsel. However, thereafter, finding that exparte decree was passed against them, I.A. 67 of 2004 has been filed to condone the delay in setting aside the exparte decree. The learned Judge, trial court has exercised his discretion in condoning the delay and allowed the IA., which order needs no interference. The learned counsel in support of his submissions relied on the following decisions:-

(1)N.Balakrisnan Vs. M.Krishnamurthy (Supreme Court of India,



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dated 3rd September 1998 in Civil Appeal No's 4575-76 of 1998.

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(2) (2000) 1 LW 547 [V.Amudha Vs. S.A.Arumugam and 2 others]

(3) (2019) 20 Supreme Court Cases 803 [A.Murugesan Vs. Jamuna Rani]

(4) (2018) 15 Supreme court Cases 127 [Ummer Vs. Pottengal Subida and others]

7. I have heard the submissions made on both sides and perused the typed set of papers and the citations carefully.

8. In O.S.No.67 of 2004, exparte decree was passed in favour of plaintiffs on 11.01.2010. I.A.No.63 of 2016 has been filed by the defendants to condone the delay in filing the petition to set aside the exparte decree with a delay of 1757 days. The learned Judge, keeping in view of the explanation for the delay that compromise talks would have taken place and that to struck the balance, allowed the I.A. But in the considered opinion of this court, when the defendants also filed a suit before the same court seeking relief in respect of the same



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property, the non appearance of the defendants in the suit filed by the plaintiffs cannot be accepted and after granting time, the suit in O.S.67/2004 has been decreed exparte. The defendants filed written statement and so in the absence of any bona fide reason, the delay cannot be condoned. When the defendants filed their written statement and contested the suit in O.S.No.67 of 2004, the reasons set out in the condone delay petition that the defendants have not contacted the counsel and so they did not know about the exparte order passed against them cannot be accepted by this court. The so called compromise talks taken place between the parties was not established by the defendants before the court. The delay in filing the petition to set aside the exparte decree was filed with inordinate delay and no proper explanation set out by the defendants. When the conduct of the defendants in not proceeding with the case and contacting their counsel to follow up the suit proceedings, and later come up to the court that they are having good and arguable case in the main suit would be irrelevant and the failure of the defendants to file the petition to set aside the exparte decree within the limitation period also cannot



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be taken in a liberal manner.

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9. In such view of the matter, this court is of the view that the discretion exercised by the learned Judge under Section 5 of the Limitation Act, cannot be taken as a one in the interest of justice. The failure on the part of the defendants to carry on their case before the suit proceedings, and allowing to pass exparte decree and thereafter, with a huge delay, approaching the court without proper explanation, has to be rejected.

10. In the result, this Civil Revision Petition is allowed. The order passed in I.A.No.63 of 2916 in O.S.No.67 of 2004 is set aside. The petition filed to condone the delay, is rejected. No costs.

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Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

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To

- 1.The learned District Munsif Court, Mettur.
- 2.The Section Officer, V.R.Section, High Court of Madras.



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J.NISHA BANU, J.

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