



C.R.P.No.4216 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4216 of 2022

1.Deivanayagi

2.P.Muruganandam

3.P.Elumalai

... Petitioners/Petitioners/Defendants

Vs.

Mrs.Indira

... Respondent/Respondents/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 12.10.2022 in I.A.No.1 of 2022 in O.S.No.937 of 2005, on the file of Learned District Munsiff, Poonamalee by allowing the above Civil Revision Petition.

For Petitioner : Mr.A.Vijay Kumar



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ORDER

The fair and decretal order dated 12.10.2022, passed in I.A. No 1 of 2022, in O.S. No.937 of 2005. The revision petitioners is the defendant in the suit filed by the respondent for recovery of possession of the suit property.

2. The suit filed by the respondent was decreed exparte on 10.11.2008. The respondent plaintiff filed execution petition no 30.09.2012 for delivery of the suit property. The revision petitioners/defendants claim that they came to know about the exparte decree only when they received notice from the Executive Court. The revision petitioners state that they have engaged a counsel to file a petition to set aside the exparte decree during the relevant point of time but no action was taken by the learned counsel.

3. The revision petitioners further state that after a lapse of about 10 years, they came to know that no Interlocutory Application was filed to



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set aside the exparte decree passed against the revision petitioners on 10.11.2008. Thus, the revision petitioners have filed a further application to condone the delay of 4,906 in filing the petition to set out the exparte decree.

4. The respondent contested the case. The Trial Court considered the issues and found that the revision petitioners/defendants filed an Interlocutory Application at the stage when the execution proceedings were ordered. The petitioners have not explained nor furnished any acceptable reason for condoning the huge delay of 4,906 days in filing the petition to set aside the exparte decree. The revision petitioner has not furnished any particulars clearly to establish the reason for the delay and its genuinity. Considering the fact that the revision petitioner has not established any acceptable reason for condoning the delay of 4,906 days, the Trial Court dismissed the petition. Thus, the present revision petition is filed.

5. The learned counsel for the revision petitioners mainly contended that the petitioner engaged a lawyer during the relevant point of



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time to file the petition to set aside the exparte decree which was not filed.

However, the copy of the petition was handed over to the revision petitioners. Only when the revision petitioners received the order in execution proceedings, they came to know that no such petition was filed. Thereafter, they engaged another lawyer and filed an Interlocutory Application to condone the delay of about 4,906 days in filing the petition to set aside the expert decree.

6. If at all, any fraud or misrepresentation has been committed by the lawyer engaged by the revision petitioners, it is for them to initiate all appropriate actions against such lawyer in the manner known to law. If fraud has been committed, as if stating that an Interlocutory Application was filed on the file of the Court which was actually not filed, it is also a misconduct and the litigant is entitled to claim all damages for such fraudulent activity and for initiation of disciplinary proceedings through the Bar Counsel. The revision petitioners are at liberty to initiate all appropriate proceedings if their statements are found to be true.



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7. As far as the revision petition is concerned, this Court cannot condone the delay of 4,906 days in a routine manner. Except for the statement that the lawyer concerned has not filed the application during the relevant point of time, the petitioner has not furnished any other reasons. The reason why the petitioner was waiting for about 10 years is also not explained. Whether the revision petitioners have pursued the matter either with the lawyer or with the Court concerned is also not explained. Unconardonable delay cannot be condoned. Delay is to be explained with sufficient reasons. The sufficiency of the reasons are of importance for the purpose of condoning the enormous delay in filing such petitions.

8. In the present case, the exparte decree was passed on 10.11.2008, and the Interlocutory Application to set aside the expert decree was passed after a lapse of 10 years, thus, this Court does not find any reason to interfere with the order passed by the Trial Court.



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9. Thus, the order dated 12.10.2022 passed in I.A. No.1 of 2022, in O.S. No.937 of 2005 is confirmed, accordingly, the civil revision petition stands **dismissed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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21.12.2022

Index: Yes
Internet: Yes
Speaking Order

To

1. District Munsiff, Poonamalee.



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S.M.SUBRAMANIAM.J.,

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