



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
THE HONOURABLE MR. JUSTICE P.VELMURUGAN
DATED : 19.01.2022
CORAM :
C.R.P (MD)No.1732 of 2012 (NPD)

WEB COPY

Lokambal

... Petitioner/2nd Defendant/
Petitioner

Vs.

1.Nagarajan

... Respondent/Plaintiff/
Respondent

Dhanam(died)

2.Ramasamy

3.Balan

... Respondents/1,3,4
Defendants/Respondents

4.Dhanapal

5.Mallika

... Respondent/Proposed Party
/Respondents(Respondents 2 to
6 are given up in the above C.R.P)

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final order dated 09.01.2012 passed in I.A.No.722 of 2006 in O.S.No.344 of 1997 on the file of the District Munsif Court, Musiri.

For Petitioner : Mr.R.Govindarajan
For R1 : Mr.K.Govindaraju

ORDER

This Civil Revision Petition is filed to set aside the fair and final order, dated 09.01.2012 passed in I.A.No.722 of 2006 in O.S.No.344 of 1997 by the District Munsif Court, Musiri.

2.The petitioner is the second defendant and the respondent is the plaintiff.

3.The first respondent filed a suit in O.S.No.344 of 1997 before the District Magistrate Court, Musiri, against the petitioner and the respondents 2 to 4, for specific performance. The said suit was decreed as ex-parte, since the petitioner has not received the suit summons. Only at the time of initiation of execution proceedings, the petitioner came to know about the ex-parte decree. Therefore, the petitioner filed a petition in I.A.No.722 of 2006 to condone the delay of 1593 days in filing the petition to set aside the ex-parte decree passed against the petitioner on 19.12.2000 in



the suit. The said I.A was dismissed by the trial Court. Challenging the order of dismissal, the petitioner has filed the present civil revision petition.

4.The learned counsel appearing for the petitioner would submit that the petitioner was shown as the second defendant in the suit in O.S.No.344 of 1997 and no notice was served to her and she left her native place and went to Chennai for her survival and she was working as servant maid in one Natarajan's house. Therefore, she was not aware of the ex-parte proceedings. Only at the time of filing the execution petition in the month of April, the petitioner received notice in the execution petition. Thereafter, she has filed a petition to set aside the ex-parte decree with the delay of 1593 days in filing the said application and the said delay is neither wilful nor wanton. The learned counsel further would submit that though the respondents have stated that notice was served through the petitioner's brother, she has no talking terms with her brother. As she was away from her native place, she did not know about the suit proceedings. In order to substantiate the averments made in the affidavit, she was examined as P.W.1 and the said Natarajan was examined as P.W.2 and the petitioner proved that she was not in the native place at the time of filing the suit. Therefore, the trial Court failed to appreciate the evidence and rejected the claim of the petitioner. Hence, he prays that the order of the trial Court is liable to be set aside.

5.When the matter is taken up for hearing today, this Court has given sufficient opportunity to the first respondent, but, the learned counsel appearing for the first respondent has not come forward to put-forth his submission before this Court and perused the materials placed before this Court.

6.Admittedly the first respondent filed the suit in O.S.No.344 of 1997 against the petitioner and others before the District Munsif Court, Musiri, in which, the petitioner was shown as the second defendant and the said suit was decreed as ex-parte, on 09.01.2012. After coming to know about the ex-parte decree, the petitioner filed a petition under Section 5 of the Limitation Act, to condone the delay of 1593 days in filing the petition to set aside the ex-parte decree. The petitioner has stated in her affidavit that the suit was filed in the year 1997 and for the past 7 years, she was not in her native place and she left to Chennai and residing at Tambaram and working as servant maid in one Natarajan's house. The petitioner was examined as P.W.1 and the said Natarajan was examined as P.W.2 and they have stated that the petitioner was not in the native place for the past 7 years and she was not aware of the suit proceedings and she had no talking terms with her brothers. Therefore, the suit notice was not served to the petitioner, she was set ex-parte, as if notice was sent to her was returned as refused. However, the petitioner has not stated anywhere in her affidavit that how she



was served to her and as to whether for the past 7 years, she has come to her native place or not.

7.It is settled preposition that in the petition to condone the delay, the delay has to be explained in the manner known to law and each day of the delay has to be explained properly. Without giving any particulars, the petitioner baldly stated that for the past 7 years, she was not in the native place. For which, she has not relied upon any independent evidence in her native place. Though Natarajan/P.W.2 has stated that for the past 7 years, the petitioner was working as a servant maid in his house, the petitioner has not stated in her affidavit that she never gone to her native place and she was in Chennai.

8.In the said circumstances, this Court finds that the delay of 1593 days in filing the petition to set aside the ex-parte decree, dated 09.01.2012 was not properly explained. As far as the condone delay is concerned, it is a discretionary power of the trial Court, unless, the findings of the trial Court are arbitrary, without any reason, normally, the revision Court will not interfere with the findings of the trial Court. Therefore, there is no merit in the civil revision petition and the same is liable to be dismissed. Accordingly, this Civil Revision Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The District Munsif,
Musiri.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-1830[F] dated
20/01/2022)

C.R.P (MD) No.1732 of 2012 (NPD)
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RD(02.02.2022) 3P 5C