



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P (MD)No.667 of 2010

WEB COPY

Boarselvi

... Petitioner/Petitioner
/2nd Defendant

Vs.

Syed Mazood

... Respondent/Respondent/
Plaintiff

PRAYER: This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, by setting aside the order and decree dated 03.02.2010 passed in I.A.No.99 of 2008 in O.S.No.91 of 1997 on the file of the Additional Sub-ordinate Court, Tenkasi, Tirunelveli District.

For Petitioner : Mr.B.Prahalad Ravi
For R1 to R4 : Mr.M.Saravanan

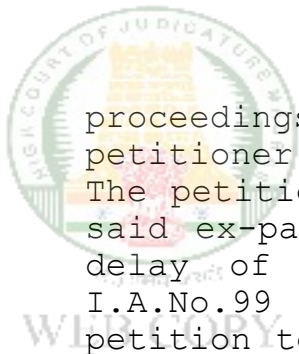
O R D E R

This Civil Revision Petition is filed to set aside the order and decree dated 03.02.2010 passed in I.A.No.99 of 2008 in O.S.No.91 of 1997 by the learned Additional Sub-ordinate Judge, Tenkasi, Tirunelveli District.

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

3.The respondent/plaintiff filed a suit in O.S.No.91 of 1997 for specific performance before the Additional Subordinate Court, Tenkasi. The said suit was decreed on 08.08.1999 as ex-parte. Thereafter, the petitioner has filed an application in I.A.No.99 of 2008 to condone the delay of 3399 days in filing the petition to set aside the ex-parte decree. That petition was dismissed by the trial Court. Challenging the same, the petitioner is before this Court.

4.The learned counsel appearing for the petitioner would submit that in the said suit, the first defendant is the husband of the petitioner and the petitioner was the second defendant. Subsequently, the petitioner's husband died on 03.08.2008. Since there was some misunderstanding between the husband and wife, the petitioner left the matrimonial home. Therefore, the petitioner was not aware of the suit proceedings in earlier. After the death of the petitioner's husband, she came to know that there was a suit



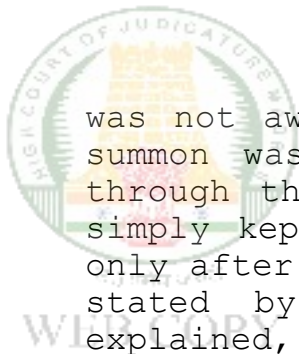
proceedings and the same was decreed as ex-parte. Therefore, the petitioner approached the counsel to set aside the ex-parte decree. The petitioner's counsel advised her that in order to set aside the said ex-parte decree, she has to file an affidavit to condone the delay of 3399 days. Therefore, she filed an application in I.A.No.99 of 2008 to condone the delay of 3399 days in filing the petition to set aside the ex-parte decree. Since the petitioner was not aware of the earlier suit proceedings and the said suit was decreed, an opportunity has to be given to the petitioner. Hence, the learned counsel prays that the order passed by the trial Court is liable to be set aside and allowed the civil revision petition.

5.The learned counsel appearing for the respondent would submit that the suit summon was served to the petitioner and she also entered her appearance through the counsel. The petitioner has not filed the written statement, hence, the suit was decreed as ex-parte. The petitioner is aware of the suit proceedings. Though the petitioner has stated the reasons for filing this petition that there was some misunderstanding between her husband, she was away from her husband and she was not aware of the suit proceedings, the delay was not explained properly and no documentary evidence was produced as she was not living with her husband. Therefore, the delay of 3399 days is not a meagre and the petitioner did not explain the delay properly and therefore, the trial Court has rightly dismissed the said application. Hence, the learned counsel prays for dismissal of the present civil revision petition.

6.Heard Mr.B.Prahalad Ravi, learned counsel appearing for the petitioner and Mr.M.Saravanan, learned counsel appearing for the respondent and perused the entire materials placed before this Court.

7.Admittedly, the respondent is a plaintiff, who has filed a suit in O.S.No.91 of 1997 for specific performance against the petitioner herein. Admittedly, the said suit was decreed on 08.06.1999. On a perusal of the order, it is seen that the suit summon was served to the petitioner and she also entered her appearance through the counsel. Since no written statement has been filed, the suit was decreed as ex-parte on 08.06.1994 and subsequently, no application has been filed to set aside the ex-parte decree. After the death of the petitioner's husband, she came to know the earlier suit proceedings and filed an application to condone the delay of 3399 days in filing the petition to set aside the ex-parte decree. The petitioner has not proved the reasons stated in the affidavit. Therefore, the trial Court has dismissed the said petition.

8.On reading of the records that though the petitioner has stated that notice was not served and she was not aware of the ex-parte decree, she was not living with her husband due to some <https://hcr.mca.gov.in/hosivines/> and she was away from her husband. Therefore, she



was not aware of the suit proceedings. The fact remains that the summon was served and the petitioner had entered her appearance through the counsel and she is aware of the suit proceedings and simply kept quiet for more than 9 years, she filed an application only after the initiation of execution proceedings. Since the reason stated by the petitioner in the affidavit has not properly explained, the trial Court has rightly dismissed the said petition. It is a settled proposition that the order passed in the petition to condone the delay, its only a discretionary power of the trial Court, unless there is a perversity, the revisional Court may not interfere with.

9. In view of the above, there is no merit in the revision and the civil revision petition is liable to be dismissed. Accordingly, this Civil Revision Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Additional Sub-ordinate Judge,
Tenkasi,
Tirunelveli District.

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

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-861[F] dated 07/01/2022)

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-876[F]
dated 07/01/2022)

**Order made in
C.R.P (MD) No. 667 of 2010
07.01.2022**

bk (CO)

GC (25.01.2022) 3P 6C