



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.511 of 2018 &
CMP(MD)Nos.3914 and 2247 of 2018

C.Malayakkal

... Petitioner

Vs.

Muniyammal

... Respondent

PRAYER:- Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the fair and executable order dated 06.12.2017 in IA.No.336 of 2017 in OS.No.212 of 2008 on the file of the District Munsif Court, Madurai Taluk and allow the same.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.V.Prabhakaran

ORDER

The defendant, whose application for condoning the delay of 106 days in filing an application to set aside the exparte decree has been dismissed, is the revision petitioner before this Court.

2. The facts in brief are as follows.

2.1. The respondent / plaintiff had filed a suit in OS.No.212/2008 on the file of the District Munsif Court, Madurai Taluk for declaration that she is entitled to the plaint B schedule property and for its possession; for permanent injunction restraining the defendant, her men, agents and servants from putting up any further construction on the suit property; and mandatory injunction directing the defendant to remove the unauthorized construction put up by her in the suit B schedule property.

2.2. It appears that after entering appearance in the suit, the defendant had filed a written statement as well as additional written statement refuting the claim of the plaintiff. Thereafter, the defendant had not turned up for the trial of the suit. An exparte decree came to be passed on 11.11.2016. Thereafter, the defendant had come forward with the impugned application namely, IA.No.336/2017 for condoning the delay of 106 days in filing the application to set aside the exparte decree.



2.3. It is the case of the defendant in the affidavit filed in support of the petition to condone the delay that it was when summon in EP.No.13/2017 had been received, she came to know about the exparte Judgment and decree. The defendant would submit that she had immediately met her erstwhile counsel, who had not given any satisfactory response, on the contrary, had handed over the papers back to her. Thereafter, she had engaged the present counsel and taken steps immediately to file the application. As a result of which, there was a delay of 106 days. The plaintiff has filed a counter denying the above statements stating that it was concocted and the defendant was only attempting to protract the proceedings.

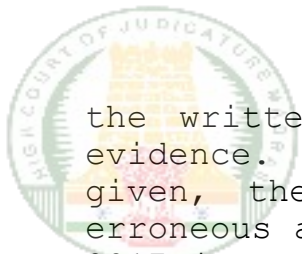
2.4. The learned District Munsif dismissed the said petition and in the order has unnecessarily traversed into the merits of the main suit, questioning the defence raised by the defendant in the written statement. The learned Judge went on to disbelieve the contentions of the defendant that it was only when summons was received in the execution proceedings that she had come to know about the passing of the exparte decree.

3. The learned counsel appearing on behalf of the revision petitioner / defendant would submit that despite giving sufficient reasons and the delay being only 106 days, the learned Judge erred in dismissing the application by considering the defence made by the revision petitioner / defendant in her written statement and to opine that she has not substantiated these contentions by proof. He would submit that these are issues that has to be considered only during the trial.

4. The learned counsel for the respondent / plaintiff would try to support the order by stating that the attempt of the revision petitioner / defendant is only to drag on the proceedings.

5. Heard the learned counsels and perused the records.

6. The records would reveal that the revision petitioner / defendant has been seriously contesting the proceedings by filing a written statement and thereafter, an additional written statement. The revision petitioner / defendant has also stated that she had not been kept aware about the posting of the suit for trial and it was only when, the summon in the execution proceedings was received by her, that, she had come to know about the exparte decree. Thereafter, it is her case that the erstwhile counsel has not responded properly to her and on the contrary handed over the papers back to her. The delay is of 106 days. No doubt, the length of the delay is immaterial and it is only the reason given has to be considered. The Court below appears to have been swayed by the counter filed by the respondent / plaintiff and consequently, delved into the contents of the written statement and tried to pick holes in the same, thereby totally overlooking the fact that the pleadings in



the written statement are to be proved by the defendant through evidence. Considering the fact that sufficient reasons have been given, the dismissal of the condone delay petition is totally erroneous and accordingly the order dated 06.12.2017 in IA.No.336 of 2017 in OS.No.212 of 2008 on the file of the District Munsif Court, Madurai Taluk is set aside. A direction is given to the learned District Munsif, Madurai to give directions for numbering the petition to set aside the exparte decree at the earliest and on such numbering, set aside the same and proceed with the trial. Since the suit is of the year 2017, the same shall be disposed of within a period of four months from the date of setting aside of the exparte decree.

7. In fine, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The District Munsif,
Madurai Taluk, Madurai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-1098[F] dated 11/01/2022)

+1 CC to M/s.V.PRABHAKARAN, Advocate (SR-1128[F] dated 11/01/2022)

C.R.P (MD) No.511 of 2018

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