



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.02.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P (MD) No.8 of 2017 &
CMP (MD) No.18 of 2017

WEB COPY

1.Khanmal Jain
2.Edward

... Petitioners/3, 4 Defendants

Vs.

1.Muthupechi
2.Selvarani
3.Balamurugan
4.Ayyanan
5.Ganeswari

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 10.10.2013 in IA.No.397 of 2012 in OS.No.281 of 2007 on the file of the District Munsif Court, Thirumangalam and allow the Civil Revision Petition with costs.

For Petitioners : Mr.R.R.Kannan
For Respondents : No appearance

ORDER

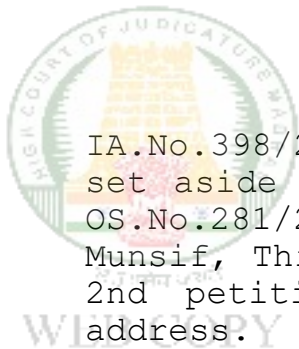
This revision petition is filed to set aside the order dated 10.10.2013 in IA.No.397 of 2012 in OS.No.281 of 2007 on the file of the District Munsif Court, Thirumangalam.

2. There was no representation for the respondents on 12.01.2022, 20.01.2022 and 14.02.2022. Even today, ie., on 16.02.2022, there is no representation for the respondents. Hence, the respondents are hereby set exparte.

3. IA.No.397 of 2012 was filed by the petitioners / defendants 3 and 4 under Section 5 of the Limitation Act and under Section 151 of the Code of Civil Procedure to condone the delay of 1065 days in filing an application to set aside the exparte decree dated 25.11.2008. The learned District Munsif, Thirumangalam dismissed the IA on the ground that the petitioners have not given valid reason for condoning the delay of 1065 days in filing the application. Challenging the said dismissal order, the petitioners / defendants 3 and 4 have come up with this revision.

4. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

5. As per the affidavit filed in support of IA.No.397/2012, no suit summons were served upon the first petitioner / 3rd defendant through Court. From a perusal of records, it is seen that



IA.No.398/2012 was filed by the petitioners / defendants 3 and 4 to set aside the exparte order dated 08.07.2010 in IA.No.1460/2009 in OS.No.281/2007. IA.No.398/2012 was allowed by the learned District Munsif, Thirumangalam on 10.10.2013 on the ground that summon to the 2nd petitioner / 4th defendant was not issued to the correct address.

6. A perusal of affidavits filed in IA.Nos.397 & 398/2012 would show that the reasons stated in both the applications are one and the same. However, IA.No.398/2012 was allowed by the learned District Munsif on the ground that summon was not issued to the correct address and IA.No.397/2012 was dismissed by the learned District Munsif on the ground that the petitioners have not given valid reason for condonation of delay. In one petition, the learned District Munsif has accepted the reason and in another petition, he has not accepted the reason stated in the petition. In such circumstances, this Court is inclined to set aside the order passed by the learned District Munsif, Thirumangalam.

7. Accordingly this Civil Revision Petition is allowed by setting aside the order dated 10.10.2013 in IA.No.397 of 2012 in OS.No.281 of 2007 on the file of the District Munsif Court, Thirumangalam. No costs. Consequently, the connected miscellaneous petition is closed.

8. The learned District Munsif, Thirumangalam is directed to number the petition filed under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the exparte decree and proceed with the same. **(*) and also directed to dispose of the matter within three months, from the date of receipt of a copy of this order.**

Sd/-

Assistant Registrar (CS-II)

(*)Corrected as per the order of this court dated 20.04.2022 made in CRP(MD) .No. 8 of 2017

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mbi

(*) to be substituted the order already despatched on 08/03/2022
To

The District Munsif Court,
Thirumangalam

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.R.R.KANNAN, Advocate (SR-6578[F] dated 16/02/2022)

+1 CC to M/s.T.R. JEYAPALAM, Advocate (SR-20023[F] dated 21/04/2022)

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C.R.P (MD) No.8 of 2017
16.02.2022

CK (CO)

KB (04.03.2022) 3P 3C

CK (CO)

KB (04.03.2022) 3P 4C