



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>09.06.2023</i>
<i>Pronounced on</i>	<i>17.07.2023</i>

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.Nos.83, 84 & 1620 of 2023
in C.S.No.1003 of 2007

Hariram @ Univ Phreykz

...

Applicant in all applications

vs.

1. Mala Thiruvalluvan

2. Thanjammal

3. Jayanthi

4. Suryaprabha

...Respondents in all applications

Application in **A.No.83/2023** is filed under Order XIV Rule 8 of the Original Side Rules read with Section 5 of Limitation Act to condone the delay of 1089 days in filing the application to set side the exparte order dated 11.12.2019 passed in A.No.2234 of 2017 in C.S.No.1003 of 2007.

Application in **A.No.84/2023** is filed under Order XIV Rule 8 of the Original Side Rules read with Section 5 of Limitation Act to condone the delay of 3335 days in filing the application to set side the exparte order dated 07.10.2013 passed in C.S.No.1003 of 2007.



Application in **A.No.1620/2023** is filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Civil Procedure Code to stay all further proceedings in pursuance of the preliminary decree dated 07.10.2013 passed in C.S.No.1003 of 2007 pending disposal of the applications to set aside the *ex parte* decree dated 07.10.2013 passed in C.S.No.1003 of 2007 along with an application to condone the delay in filing the same and the application to set aside the *ex parte* order dated 11.12.2019 passed in Application No.2234 of 2017 in C.S.No.1003 of 2007.

For Applicant : Mr. S.Giritharan

For Respondent-1 : Mr. J.Srinivasa Mohan

COMMON ORDER

A.No.83/2023 is filed to condone the delay of 1089 days in filing the application to set side the *ex parte* order dated 11.12.2019 passed in A.No.2234 of 2017 in C.S.No.1003 of 2007.

A.No.84/2023 is filed to condone the delay of 3335 days in filing the application to set side the *ex parte* order dated 07.10.2013 passed in C.S.No.1003 of 2007.

A.No.1620/2023 is filed to stay all further proceedings pursuant to the preliminary decree dated 07.10.2013 passed in C.S.No.1003 of 2007.

2. The applicant who is the second defendant in the suit in



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C.S.No.1003 of 2007 has filed these applications by stating that he was residing along with his mother at United States of America for the past 33 years and he was not aware of the suit proceedings in C.S. No.1003 of 2007; the applicant / second defendant and his mother have become residents of United States of America and they have been continuously residing there; the applicant never received any summons in the suit; on receipt of the Advocate Commissioner's report during the year 2022, the applicant came to know about several proceedings and about the partition suit in which the first respondent / plaintiff has got a preliminary decree on 07.10.2013 in respect of 1/5th share in the suit properties.

2.1. A public auction was conducted by the Commissioner on 19.03.2022 after issuing paper publication without any notice to the applicant; except the fourth respondent / fourth defendant, no one had participated in the public auction; after coming to know about the proceedings, the applicant came down to Chennai and gave his vakalat to his counsel and filed an application to set aside the *ex parte* decree dated 07.11.2013; the second defendant also did not inform the first defendant about the suit proceedings; after taking lot of efforts, the applicant who got the papers came to know about the *ex parte* order; after filing a search



memo and receiving papers, he came to know that there are observations in records that the summons were served upon him on 15.06.2009; since no written statement was filed by him, the matter was ordered to be listed under the caption “Undefended board” and the applicant was set *ex parte*.

2.2. The applicant got surprised that some counsel had entered appearance in the Court by stating that he was engaged by the applicant; the applicant had never met any Advocate and engaged his or her services to represent him in the suit and he did not sign any vakalat or any papers authorising any Advocate to appear on his behalf; after coming to know about the proceedings, the applicant has come out with an application to condone the delay in filing the application to set aside the *ex parte* decree dated 07.10.2013 and also to condone the delay in setting aside the *ex parte* order dated 11.12.2019 passed in A.No.2234 of 2017.

3. The first respondent / plaintiff has filed a counter by stating that the applicant has made a false statement before the Court; the second respondent / first defendant in the suit is the mother of the plaintiff and the second defendant, third and fourth respondents are the sisters; the plaintiff had filed the suit in the year 2007; the applicant / second defendant



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engaged the counsels by name Mr.P.Valliappan and Mr.GR.M.Palaniappan and they have filed vakalat for the applicant on 28.02.2008 and the vakalat is attested by Indian Consulate in U.S.A.; the applicant / second defendant engaged the same advocates who filed vakalat for the applicant / second defendant on 28.02.2008; the proceedings before the learned Master would also show that Mr.P.Valliappan was making his appearance for the first and second defendants.

3.1. The matter was referred to mediation and it did not fructify; the applicant and the first defendant's mother were represented through counsel; during the mediation proceedings the first defendant Thanjammal changed her counsel and Mr.Bhaskaran, Advocate, filed change of vakalat; even though the applicant had engaged a counsel, he did not file any written statement and hence the defendants in the suit were set *ex parte*; only after six months from the date when the defendants were set *ex parte*, *ex parte* evidence was taken and the preliminary decree for partition was passed; the plaintiff wrote a letter to the defendants prior to the suit and that was also served on all the defendants; so it is apparent that the allegations in the affidavit are contrary to the real facts and the applicant has committed the offence of Perjury by filing false affidavit.



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3.2. In the final decree application in A.No.2234 of 2017 for appointment of Commissioner, private notice ordered to the applicant and the second respondent / first defendant Thanjammal were taken to the address as stated in the application; the proceedings recorded in the application would show that the service has been completed successfully; the applicant / second defendant had taken the first defendant mother along with him to U.S.A. and she is also residing with him; so it is false to state that summons and notice sent for the mother has been served but notice was not served upon the applicant who is also residing in the same address; the attestation that was made by the Indian Consulate itself is denied and that will have a larger consequence; the applicant is threatening the buyers and preventing the advocate commissioner from executing his duties; there is absolutely no merits in these applications and hence the same should be dismissed.

4. The learned counsel for the applicant / second defendant submitted that the applicant had not engaged any counsel to represent on his behalf during the whole of the proceedings and the notices said to have been taken, would show that it contained the name of the applicant / second



defendant erroneously as 'Harinath @ Univephrevykh'; since all the notices have been sent with wrong names, they were not served upon the applicant; the notice to the second respondent / first defendant was also sent to her village address at Thiruvallur and that is also false; the applicant's permanent address is at 3723, Prescott Loop, Lakeland, Florida 33810, USA since 24.03.2017 and he had to temporarily reside at # 4328, Yackley Ave Apt # 6, LISLE, ILLINOIS, 60532 USA from July, 2021; the paper publication was effected in Illinois, USA during February 2019 during which period the applicant was staying in Florida.

4.1 The applicant / second defendant never engaged the counsel by name P.Valliappan and Mr.GR.M.Palaniappan as his counsels; the applicant does not want to derail the process of Court but only seeks opportunity to contest his case; only because he was totally unaware of the proceedings the delay had occurred and hence these applications should be allowed.

5. The learned counsel for the first respondent submitted that the applicant / second defendant has made a false statement and it is unfair on him to deny the vakalat given to his counsel; the vakalat of the second



defendant was executed at USA and it has the seal of the Indian Consulate; having given the vakalat in favour of Mr.P.Valliappan and Mr.GR.M.Palaniappan, the applicant has chosen to lie before the Court; hence these applications should be dismissed.

6. The records would show that the vakalat was signed by the first defendant who is the mother of the applicant and the first respondent / plaintiff at Chennai. The seal of Advocates Mr.P.Valliappan and GR.M.Palaniappan have also been affixed on the same. The first respondent/ plaintiff has sent a pre-suit letter to the first and second defendants by claiming partition and that was also served on the applicant / second defendant and his mother in the above said address. The applicant has come out with an application to condone the delay in setting aside the *ex parte* order after nearly ten years on the allegation that the documents in the Court were forged. Some typographical error in the spellings of the name of the applicant / second defendant is seen to be present in some of the notices sent to him. However, they alone cannot serve as the strong basis to infer that the above communications were not received by the applicant / second defendant and hence he was not aware of the proceedings.



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7. Even though the applicant denies his engagement of the counsels Mr.P.Valliappan and Mr.GR.M.Palaniappan, it is not proved before the Court that Mr.P.Valliappan had falsely represented the applicant / second defendant. The above vakalat is a strong proof to show that notice against the second defendant has been completed and he had engaged the counsels. The first defendant being the mother of the applicant / second defendant was staying along with the applicant at USA and she had also engaged the same counsel and this will also probabalise the service of notice against the applicant / second defendant. The first defendant has not raised any objection for the engagement of the counsel made by her.

8. The applicant / second defendant being the son of the first defendant, could not have been unaware of the proceedings and in fact the first defendant would not have engaged a counsel unless she was guided by her son, the second defendant. Though it is claimed by the applicant / second defendant that some advocates have filed vakalat for him even without his instruction, he had not taken any action against them. Such a conduct on the part of the applicant is unnatural to his contention. Records would confirm that the summons against the respondent / first defendant



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has been served successfully. Despite receiving summons, the applicant / first respondent did not come forward to file their counter. I find no acceptable reason to condone the inordinate delay of several years and the applications of the applicant / second defendant is seen to be lacking in merits.

9. In view of the above stated reasons, these applications are dismissed.

17.07.2023

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Index:Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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R.N.MANJULA, J.

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