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C.R.P.No.121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.121 of 2023

V.N.Sreenivasan [died]

1. Suresh
2. Amsa
3. Nirosha

.. Petitioners

VS

V.Ramakrishnan

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 115 of the Code of Civil Procedure seeking to set aside the order and decretal order passed in I.A.No.496 of 2013 in O.S.No.263 of 1993 dated 24.01.2017 on the file of the District Munsif Court, Sholinghur.

For Petitioners : Mr.S.Sarath Chandran

For Respondent : No Appearance

ORDER

The civil revision petitioner is filed to set aside the order and decretal order passed in I.A.No.496 of 2013 in O.S.No.263 of 1993.



2. The revision petitioners are the proposed defendants / legal heirs of the deceased defendant. The respondent instituted a suit for declaration and the suit decreed ex-parte. To set aside the ex-parte decree, the revision petitioners filed an interlocutory application to condone the delay of 1149 days in filing the petition. It is not in dispute that the defendants in the suit had received the summons from the Court and after affording an opportunity to the defendants, the Trial Court decreed the suit in favour of the plaintiff. Pertinently, the suit for declaration was instituted in the year 1993 and the ex-parte decree was passed on 05.02.2010, after a lapse of about 17 years. The suit itself was decreed ex-parte after a lapse of about 17 years, during which period, the suit was very much in progress and the petitioners were aware of the proceedings including the appeal suit filed in between.

3. While so, they have filed an interlocutory application after a lapse of about three and a half years to set aside the ex-parte decree passed in the suit in O.S.No.263 of 1993.



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4. The Trial Court elaborately considered the reason furnished by the revision petitioners for condoning huge delay of 1149 days. The Trial Court found that the petitioners have not substantiated their reasons and consequently dismissed the petition.

5. The reason stated for condoning the delay is that the original defendant was suffering from Jaundice. However, the reason was not substantiated through documents or evidences. Mere affidavit, that the defendant was suffering from Jaundice would be insufficient to condone a huge delay of 1149 days in filing a petition to set aside the ex-parte decree. The reason must be sufficiently explained, otherwise, Courts would not condone the delay in a routine manner.

6. Unconardonable delay cannot be condoned in a mechanical manner by the Courts. The law of limitation is substantiated. Thus, the Rule is to file a petition within a time prescribed. Condonation of delay is an exception. Courts are expected to exercise the power of discretion judiciously and



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consider the prescribed period in the event of condoning huge delay. Thus, the reasons must be sufficient enough to condone the delay. No doubt, meagre delay in filing such petition can be taken, but taking a lenient view in long and enormous delay cannot be condoned in the absence of an acceptable reason and this Court do not find any infirmity in respect of the order passed by the Trial Court in dismissing the interlocutory application, filed to condone the delay of 1149 days.

7. In the present case, it is stated that one of the defendant was suffering from Jaundice. Mere submission in this regard would be insufficient to condone the delay of 1149 days and more so, the suit was instituted in the year 1993 and the ex-parte decree was passed in the year 2010 and almost thirty years lapsed and the person who slept over his right cannot wake up and seek opportunity to defend his case once again. It would undoubtedly cause great prejudice to the interest of the decree holder.



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8. In view of the above observations, this civil revision petition stands

dismissed. There will be no order as to costs.

Speaking Order/Non-Speaking Order.

23.01.2023

Internet : Yes/No.

Index: Yes/No.

Neutral Citation: Yes/No

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To

1. The District Munsif Court, Sholinghur.



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S.M.SUBRAMANIAM, J.

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