



C.R.P. No. 3329 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 3329 of 2023

and

C.M.P.Nos.20653 of 2023

1. Karunakaran

2. S.Backiam

3. Ms. Malliga

...Petitioners

.Vs.

D. Kamalnathan

...Respondents

Prayer: This Civil Revision Petition is filed under Section 115 of C.P.C praying to set aside the order passed in I.A.No.1 of 2022 in O.S.No.195 of 2018 dated 30.06.2023 on the file of the Sub Ordinate Judge, Dharapuram, Tiruppur District and pass orders.

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For Petitioner : Mr.M. Vijayan for Karan and Uday

ORDER

This petition is filed to set aside the order passed in I.A.No.1 of 2022 in O.S.No.195 of 2018 dated 30.06.2023 on the file of the Sub Ordinate Judge, Dharapuram, Tiruppur District and pass orders

2. The case of the petitioners is that the petitioners who are the defendants 12 to 14 have filed a petition against the Respondent herein in I.A.No.1 of 2022 in O.S.No.195 of 2018 dated 30.06.2023 under Section 5 of the Limitation Act seeking for condoning a delay of 260 days in filing a petition under Order 9 Rule 13 of CPC to set aside the exparte decree dated 23.03.2021 and the same was dismissed vide order dated 20.06.023. Hence this petition.

3. The learned counsel for the petitioner submitted that the suit was filed in the year 2018 and the petitioners also entered appearance on 26.10.2018. Thereafter, the matter was continuously adjourned and finally as there was no representation for the petitioner on 27.09.2019, the



petitioners herein were set ex-parte. It is pertinent to note that the petitioners entered appearance on 26.10.2018 and they were set ex-parte on 27.09.2019. He further submitted that only after receipt of the notice in E.P.No.77 of 2022 in O.S.No.195 of 2018, the petitioners herein came to know about the knowledge of the Ex-parte Decree.

4. On a perusal of records it is seen that the suit is filed in the year 2018 and the petitioners herein entered appearance in 2018. The petitioners are not even aware of the ex-parte decree passed in O.S.No.195 of 2018 and they have also filed a partition suit in O.S.No.354 of 2021, before the Sub Court Dharapuram and the same was settled before Lok Adalat. Further more, the contention raised by the petitioner that only after the receipt of the notice in E.P.No.77 of 2022 in O.S.No.195 of 2018 they came to know about the knowledge of the Ex-parte Decree is proved, as they have filed their counter in E.P. on 20.12.2022.

5. Considering the facts of the case, the petitioners are entitled to succeed and this Civil Revision petition is allowed and the order passed in



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I.A.No.1 of 2022 in O.S.No.195 of 2018 dated 30.06.2023 on the file of the Sub Ordinate Judge, Dharapuram, Tiruppur District is hereby set aside. The learned Judge is directed to take note of the Lok Adalat award passed in O.S.No.354 of 2021 and dispose of the suit in O.S.No.195 of 2018 as expeditiously as possible.

6. With the above directions, this Civil Revision Petition is allowed. Consequently the connected miscellaneous petition is closed. No order as to costs.

12.09.2023

smn

Index : Yes/No

Internet: Yes/No

To.

1. The Sub Ordinate Judge, Dharapuram, Tiruppur District



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V.BHAVANI SUBBAROYAN,J.
Smn

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