



CRP(MD).No.1614 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1614 of 2019

and

C.M.P.(MD)No.8478 of 2019

R.Kalamani

: Petitioner

Vs.

P.Prabakaran

2.P.Arulvadivel

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 10.01.2018 made in I.A.No.252 of 2017 in O.S.No.212 of 2011, on the file of I Additional Subordinate Court, Madurai.

For Petitioner : Mr.R.G.Shankar Ganesh

For Respondents : Mr.S.Chandrasekaran

ORDER

This Civil Revision Petition is filed praying to set aside the order dated 10.01.2018 made in I.A.No.252 of 2017 in O.S.No.212 of 2011, on the file of I Additional Subordinate Court, Madurai.



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2.The present petitioner is the fourth defendant and the respondents are the plaintiffs. The learned Counsel for the petitioner would submit that an ex-parte decree was passed on 27.01.2017, wherein while filing an application to set aside the ex-parte decree along with a written statement, there was a delay of 138 days. The reason for such delay is the ailment of the petitioner. However, the Court below has disbelieved the reason and has dismissed the said application. Aggrieved by the said order, the petitioner is before this Court.

3.Learned Counsel for the petitioner would submit that the respondents have filed a suit for declaration in respect of their property and that only because of his ill health, the petitioner was not in a position to appear before the Court and he suffered with an ex-parte decree dated 27.01.2017. Learned Counsel would further submit that the delay of 138 days was neither willful nor wanton and has arrived only because of the prejudicial health and due to his depression.

4.Learned Counsel for the respondents objected the said contention and submitted that though delay appears to be 138 days, the real delay would be 6 years, since written statement has been



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filed only after 6 years. Therefore, there is no *bona-fide* in the reason given by the petitioner.

5.I have given my anxious consideration to the submissions made on either side and perused the records.

6.While perusing the plaint, there was a prayer sought for against the petitioner. Learned Counsel for the petitioner would submit that he is the owner of the schedule mentioned property and he is in possession and enjoyment over the same. Therefore, he would submit that, if the delay is not condoned, his right would be prejudiced. While perusing the delay, it is found that the delay is not so enormous and it is only 138 days and here the petitioner wants is only an order on merits and therefore, this Court is of the view that, considering the peculiar circumstances of the case and the involvement of various suit schedule properties, this Court deem it appropriate to condone the delay. However, considering the hardship faced by the respondents herein, this Court deem it appropriate to award cost.

7.In the result, this Civil Revision Petition is allowed on condition directing the petitioner to pay a sum of Rs.5000/- to the respondents, within a period of four [4] weeks from the date of



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receipt of a copy of this order, failing which this Civil Revision Petition would be dismissed, without any further reference to this Court. However, considering the long pendency of the suit since 2011, this Court deems it appropriate to issue a further direction to the Court below to dispose of the suit as expeditiously as possible, preferably within a period of six [6] months from the date of receipt of a copy of this order. No doubt, the above direction is subject to the outcome of the order passed in an application to set aside the ex-parte decree. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

25.09.2023

Index : Yes / No

Internet : Yes / No

MR



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To

1.The I Additional Subordinate Judge,
Madurai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.,

MR

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