



C.R.P.(MD)No.2291 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 19.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.2291 of 2018

and

CMP(MD)No.10267 of 2018

1.Ganesan

2.Komali

... Revision Petitioners/Petitioners/
Defendants

Vs.

Muthu

... Respondent/Respondent /
Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 07.08.2018 passed in I.A.No.1474 of 2017 in O.S.No.81 of 2015 on the file of the Principal District Munsif Court, Aruppukkottai.

For Petitioners : Mr.P.Santhana Krishnan

For Respondent : Mr.R.Ramadurai



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ORDER

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The instant Civil Revision Petition has been filed, against the order, dated 07.08.2018, passed in I.A.No.1474 of 2017 in O.S.No.81 of 2015, on the file of the Principal District Munsif Court, Aruppukkottai.

2. The revision petitioners are the defendants before the trial Court. It appears that the plaintiff / respondent herein has filed a suit in O.S.No.81 of 2015 for the relief of declaration and for recovery of possession against the defendants/ revision petitioners, wherein, the suit was decreed exparte on 21.07.2016. When the petitioners herein filed the application to set aside the exparte order, there was a delay of 373 days. However, the learned trial Judge vide order dated 07.08.2018, dismissed the delay condonation application. Aggrieved with the order of the learned trial Judge, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioners would submit that the petitioners herein are the aged persons, and only because of their age related issues and severe knee pain they could not able to follow up with their counsel. In the meanwhile, there was a delay of 373 days in filing the



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application to set aside the exparte decree. Therefore, prayed to condone the delay.

4. Per contra, the only objection raised by the respondent herein is that the reason assigned by the petitioners is not *bonafide*. Further contended that the conduct of the petitioners should be taken into consideration. Hence, prayed for dismissal of the Civil Revision Petition.

5. This Court have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

6. On perusal of the records, it appears that the petitioners are aged about more than 60 years, and the reasons assigned in the petition for the condonation of delay is an age related issue. Thus, it is settled principle of law that while considering the delay condonation application, the Courts should be liberal, since the petitioners only wants the decree on merits. No doubt the supporting document to prove the ailment of the petitioners not submitted. However, this Court could not out rightly ignore the petitioners'



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ailment, considering the age of the petitioners. Further if the delay is not condoned definitely the rights of the petitioners in a suit for declaration would be jeopardised and will put him in a place of no return. This Court is of the opinion that the reason pointed out by the petitioners will come with in the definition of “sufficient cause”. Therefore, this Court is inclined to allow the application by condoning delay. However to compensate the hardship of the respondent and to test the *bonafide* of the petitioners, this Court is inclined to impose cost to the respondent.

7. In the result, this Civil Revision Petition is allowed on condition that the revision petitioners shall pay a sum of Rs.3,000/- (Rupees Three Thousand only) to the respondent, within a period of four weeks from the date of receipt of the copy of this order, failing which, the present civil revision petition shall stand automatically dismissed without any further reference to this Court. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.07.2023

NCC : Yes/No

Index : Yes/No

sbm



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To

- 1.The Principal District Munsif Court,
Aruppukkottai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.

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