



C.R.P(MD)No.713 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.713 of 2023

Gunasekaran ...Petitioner/Petitioner/1st Defendant

Vs.

Krishnammal @ Krishnaveni ...Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 115 of CPC, to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.53 of 2007 dated 07.02.2020 on the file of the learned Principal District Judge, Sivagangai, and allow the Civil Revision Petition.

For Petitioner : Mr.P.Chinnian

For Respondent : Mr.V.Meenakshi Sundaram

ORDER

This petition has been filed to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.53 of 2007 on the file of the learned Principal District Judge, Sivagangai, dated 07.02.2020.

2.The petitioner is aggrieved by the impugned order passed by the Trial Court dated 07.02.2020 in I.A.No.1 of 2019 in O.S.No.53 of 2007.



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By the impugned order dated 07.02.2020, the Trial Court has dismissed the application filed by the petitioner for setting aside the *ex-parte* order dated 06.04.2015. The relevant portion of the impugned order reads as under:-

“6.The petitioner has contended that he is a business man. However, he would claim that till the time he was served that final decree application, he did not even choose to check with his counsel about the status of the suit. This does not appear believable at all. Consequently, even after receipt of notice in the final decree application, the petitioner has not chosen to come before this Court immediately. He tool his own sweet time to file the present petition. In the process, there is delay of 1185 days(i.e) nearly three years, in filing the petition to set aside the ex-parte decree passed against them. There is absolutely no worthy reason that has been stated by the petitioner for condonation of the delay. A perusal of records shows that the suit of the year is 2007 and the first defendant managed to drag the proceedings till 2015 when he was set ex-parte for not filing the written statement. Even subsequently, the petitioner had chosen to take the process for a ride. It is 12 years that the respondent had filed a suit keeping faith in this institution that a relief would be provided to him. However, the petitioner had managed to thwart the attempts of the respondent/plaintiff by misusing the process of the law. Even now, in the present petition, the petitioner had been very casual and very vague in his averments. In such circumstances, this Court of the view that the present petition deserves to be dismissed. ”

3.The petitioner is the first defendant in O.S.No.53 of 2007 before the learned Principal District Judge, Sivagangai. The said suit has been



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filed by the respondent for partition in the suit schedule property. The respondent appears to be the step mother of the petitioner as she married the petitioner's father after the death of the petitioner's mother. The suit is of the year 2007. The petitioner was set *ex-parte* on 06.04.2015 and thereafter, the preliminary decree was passed on 30.04.2015. Pursuant to the preliminary decree, the respondent has also filed I.A.No.4 of 2017 for passing the final decree. The petitioner was set *ex-parte* on 23.02.2017 in I.A.No.4 of 2017. Thereafter, the petitioner filed an application in I.A.No.149 of 2018 to set aside the final decree in I.A.No.4 of 2017. The said petition is stated to be pending.

4. Thereafter, the petitioner has filed the above I.A.No.1 of 2019 under Section 5 of Limitation Act for condoning the delay in filing the application to set aside the *ex-parte* order dated 06.04.2015. The reasons given in the affidavit for condoning the delay are as follows:-

2. The respondent has filed the suit for partition claiming $\frac{1}{4}$ share in the suit property. I have appeared through my counsel and my counsel told me to inform the next date of hearing when I required to come and my counsel obtained some blank papers with my signature to file the written statement on my side and told me to come when my counsel inform if necessary arises. On the assumption, I was under impression that my presence was not required. Besides that, I was frequently visited Malaysia for my business from 2015 to 2017. After that, I



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came to my residence and at that time when the final decree petition was served on me. Immediately, I contacted my counsel and enquired about the suit. My counsel told me that on 06.04.2015 itself, due to non-filing of the written statement, I was set exparte and exparte decree was passed against me. I came to know about the exparte decree from my previous counsel.

3.After that, I had gone to Malaysia for my step mother's sickness who is 1st wife of my father Sivanantham and my mother Manikkammal's elder sister and came back to my residence in the month of January 2017 itself and I was suffering from Typhoid fever from the middle month of January 2017 and my doctor advised me to take rest for 2 months. Subsequently on 01.04.2017 I went to Malaysia immediately for my business. The non-filing of the written statement on my side was neither wilful nor wanton. It is only due to the circumstances above mentioned and beyond the control of myself. Hence, I could not able to file the petitioner to set aside the exparte decree within the stipulated time. Unless the exparte decree is set aside, I will be put to irreparable loss and hardships. The respondent may not have any valid objection to this petition.

5.I have considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the imputed order passed by the learned Principal District Court, Sivagangai while dismissing I.A.No.1 of 2019, plaint and written statement filed by the petitioner subsequently along with the application filed in I.A.No.1 of 2019.



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6.The affidavit, which was filed for condoning the delay has not given sufficient reasons for the Court to exercise its discretionary relief under Section 5 of Limitation Act. Therefore, in my view, the petitioner has not made out a case for condoning the delay of 1185 days in filing the application for setting aside the *ex-parte* order dated 06.04.2015. No grounds have been made out by the petitioner to warrant interfere with the impugned order.

7.Therefore, this this Civil Revision Petition is liable to be dismissed. It is accordingly dismissed. No costs.

11.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Principal District Judge,
Sivagangai.

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



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C.SARAVANAN,J.

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