



C.R.P(MD)No.2668 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **08.08.2023**

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THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2668 of 2018
and
C.M.P(MD)No.11727 of 2018

1.U.Sheik Shafiq Ahamed

2.Rehhana Ahamed

... Revision Petitioners/
Respondents/Plaintiffs

Vs.

1.Murugan

2.Kannurdurai

3.Santhanam

... Respondents/Petitioners/
Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records relating to the fair and decreetal order dated 25.07.2018 in I.A.No.68 of 2018 in O.S.No.338 of 2015 on the file of the learned II Additional District Munsif, Tiruchirappalli and set aside the same.

For Petitioners : Mr.R.Sundar Srinivasan

For R1 to R3 : Mr.T.Antony Arulraj



C.R.P(MD)No.2668 of 2018

ORDER

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This civil revision petition has been filed against the order passed by the learned II Additional District Munsif, Tiruchirappalli in I.A.No.68 of 2018 in O.S.No.338 of 2015, dated 25.07.2018.

2. The petitioners herein are the respondents/plaintiffs and the respondents are the petitioners/defendants before the Court below.

3. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

4. The brief facts which give rise to the filing of the civil revision petition is that the defendants were set *ex parte* on account of the non-filing of the written statement and an *ex parte* decree was passed on 30.11.2016. It appears that there was a delay of 123 days in filing an application to set aside the *ex parte* decree. Hence, they filed an application for condonation of delay, which was subsequently allowed by the Court below on a condition to pay Rs.500/- (Rupees Five Hundred only) to the plaintiffs vide order, dated 25.07.2018.



C.R.P(MD)No.2668 of 2018

5. Aggrieved with the order, the respondents/plaintiffs are before this Court.

6. The learned counsel for the petitioners herein would submit that the very reason assigned is un-believable and would further submit that inspite of providing numerous opportunity, the non-filing of the written statement would be viewed seriously. He would also draw the attention of this Court in respect of the alleged cryptic nature of the order passed by the Court below.

7. Per contra, the learned counsel for the respondents would submit that only because of the illness, they were not able to appear before the Court, they got a valid defense also and that even the delay is not a huge one.

8. I have given my anxious consideration to either side submissions.

9. It is pertinent to mention here that there was a delay of 123 days in filing the application to set aside the *ex parte* decree. However, after considering the either side submission, the trial Court proceeded to



consider the application filed by the defendants and has allowed the same. Though the respondents have filed a detailed counter, as rightly argued by the learned counsel for the petitioners, there was no discussion in respect of the objection made by the petitioners herein. However, the Trial Court proceeded to allow the application that the hardship faced by the petitioners could be compensated by imposing cost.

10. Therefore, this Court is of the opinion that the Trial Court has positively exercised its discretion and considering the facts and circumstances of the case, this Court could not find any perversity in the order, except there is no enough reason in the judgment. It is pertinent to mention here that as per the ruling in the case of **Balakrishnan Vs Krishnamoorthy** reported in **AIR 1998 SC 3222**, the Hon'ble Supreme Court held that the Trial Court exercise jurisdiction in allowing the condonation of delay unless there is a perversity, the revisional Court should not be interfered with the same. Though, the learned counsel for the petitioner invited the cryptic nature of the order of the trial Court, with the available records such as plaint, counter statement, this Court is able to find a sufficient cause for allowing the delay condonation application. Thus, this Court does not find any infirmity in the order of the trial Court.



C.R.P(MD)No.2668 of 2018

WEB COPY

11. However, considering the long pendency of the matter, this Court directs the respondents herein to move an application to set aside the *ex parte* decree. If the respondents move an application to set aside the *ex parte* decree, the trial Judge is directed to dispose of the same within a period of two months from the date of receipt of the filing of such application. The cost awarded by the Court below is enhanced to Rs.2,000/- (Rupees Two Thousand only).

12. In the result, this Civil Revision Petition stands **allowed**. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2023

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

- 1.The learned II Additional District Munsif,
Tiruchirappalli.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.2668 of 2018

C.KUMARAPPAN,J.

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C.R.P(MD)No.2668 of 2018

08.08.2023