



C.R.P(NPD)(MD).No. 2242 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(NPD)(MD).No. 2242 of 2018

1.Subbaiah

2.Gurusamy

3.Subburaj

... Petitioners

Vs

1.Thangapandian

2.Keppakkal

....Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to call for the records relating to the Fair and Decreetal order passed by Additional District Munsif Court, Aruppukottai in I.A. No. 123 of 2018, in O.S. No. 296 of 2008, dated 23.07.2018 and set aside the same.

For Petitioners : Mr.G.Mariappan

For Respondents : Mr.S.Parthasarathy



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ORDER

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To set aside the fair and decreetal order, dated 23.07.2018 passed in I.A.No. 123 of 2018 in O.S. No. 296 of 2008 by the learned Additional District Munsif, Aruppukottai, the revision petitioners have filed this Civil Revision Petition before this Court.

2.The petitioners are the defendants before the trial Court. The respondents are the plaintiffs. For the sake of convenience, the parties are referred to as per the litigative status in the suit.

3.The brief facts which gives rise for filing the civil revision petition are as follows:

(i)The plaintiffs have filed the suit for the relief of declaration and permanent injunction. Wherein, though the defendants have filed the written statement, it appears that, when the matter was posted for examination of witnesses, they did not turn up to cross examine the plaintiffs side witnesses. In view of the same, the learned Judge has passed a Judgment and Decree on 20.06.20217;



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(ii) After passing of decree, the petitioners herein, who are the defendants before the trial Court, came up with the application to condone the delay of 218 days in filing an application to set aside the exparte decree. The reason assigned by the petitioners is that, since they were out of station due to business reason, they were not in a position to instruct their counsel. Hence, their Counsel was not able to cross examine the witnesses. Therefore, they wanted to set aside the exparte decree, dated 23.07.2018.

4.The learned counsel for the respondents herein would vehemently object the application and contend that the decree passed by the Court below is not an exparte decree, however, it is a decree on merits.

5.However, this Court respectfully disagree with the submissions made by the learned counsel for the respondents on the simple reason that in the preamble of the Judgment, the learned Judge rightly mentioned that the defendants have not participated in the trial and the said factum was further fortified in the order, particularly in paragraph No.11, wherein, it has been clearly observed that the Judgment and decree is exparte one.



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6.In such circumstances, this Court is of the considered view that the application to set aside the exparte decree is maintainable. However, the petitioners have filed an application with a delay of 218 days, for that, the reason assigned is that, they are not able to give suitable instructions to their counsel. However, the Court below has disbelieved the statement of the petitioners on the ground that they did not state the details as to when they went outstation, and when returned to their native. Though such finding appears to be correct, since because those details are not given, it does not mean that the reason to be disbelieved. Though the suit is for declaration, the petitioner and the respondent are relatives and that both parties claim title over the suit property.

7.Hence, considering the nature of suit and considering the fact that the petitioners were in outstation at that relevant point of time, this Court is inclined to condone the delay. However, the hardship faced by the respondents should be compensated. But the learned counsel for the respondent would pray this Court to order for payment of costs to any philanthropic activity.



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8.In the result, this Civil Revision Petition is allowed on payment of costs of Rs.1,000/- (Rupees One Thousand only) payable by the petitioner to the credit of Current Account No.7567821433, (IFSC IDIBI000H040), in Indian Bank High Court Branch, Madurai Bench of Madras High Court, Madurai, towards Kalaignar Centenary Library, within a period of four weeks from the date of receipt of a copy of this order, failing which, this Civil Revision Petition stands dismissed automatically. No costs.

02.08.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

PNM

To

1.The Additional District Munsif, Aruppukottai.

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



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C.KUMARAPPAN, J.,

PNM

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