



C.R.P.No.296 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.296 of 2023
and CMP.No.2433 of 2023

1.Chinnan @ Moorthy
2.Ponnukumban

... Petitioners

Vs

1.Palaniswamy
2.Kumar

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the decree and judgment dated 20.12.2022 passed in I.A.No.1 of 2022 in O.S.No.11 of 2018 by the District Munsif cum Judicial Magistrate, Yercaud, and allow this revision.

For Petitioners : Mr.C.D.Sugumar

For Respondents : M/s.Karan and Uday



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ORDER

An application for condonation of delay in setting aside the exparte decree was taken out by the defendants 2 and 3 in I.A.No.01.2022 of O.S.No.11/2018 before the District Munsif cum Judicial Magistrate, Yercaud. This application came to be allowed vide order dated 20.12.022. The said order is now sought to be revised by the plaintiffs/revision petitioners in the present revision.

2. The suit in O.S.No.11 of 2018 was filed for permanent injunction against defendants 1 to 3. In this suit, summons were issued to the defendants. The second and third defendant were said to have been served. On 02.02.2018, i.e., on the first hearing date of the suit, the defendants remained absent. Thereafter, the suit itself came to be decreed on 10.04.2018. Thereafter, on 29.01.2021, defendants 2 and 3 filed an application to condone the delay in filing an application to set aside the exparte decree and to set aside the exparte decree. In the said application, they had pleaded that they came to know of the decree only when they were served with summons in execution petition in E.P.No.64/2019 filed for the



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purpose of executing the decree in O.S.No.11 of 2018. That application was taken on file in I.A.No.01/2022, which came to be allowed by the District Munsif. Hence, the revision by the plaintiffs.

3.Heard Mr.C.D.Sugumar, learned counsel for the revision petitioners and M/s.Karan and Uday for the respondents.

4. It is the specific plea of the respondents that the procedure under Order V Rule 17 of the Code of Civil Procedure had not been followed.

5. As per the provisions under Order V Rule 17 of CPC, if a party refuses to receive the summons, then it is the duty of the officer who is serving the summons, to affix the same in a conspicuous location in the residence or the work place of the defendant. That not having been done in the present case, the learned Trial Judge has taken a view that sufficient cause has been made out.

6. It has been held by the Supreme Court in ***N.Balakrishnan Vs M.Krishnamurthy, (1998) 7 SCC 123***, that where the Trial Court has found



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sufficient cause for the purpose of condonation of delay, the revisional Court should not interfere with the same, unless and until the same is perverse.

The impugned order before me, particularly paragraph No.6.6 would lead to the conclusion that the defendants were not aware of the hearing date and the mandatory procedure under Order V Rule 17 and Rule 18 had not been followed. Therefore, I am not able to see any perversity in the order of the trial Court.

7. In the result, the revision petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

04.06.2024

Index:Yes/No
Internet : Yes / No
Speaking order / Non-speaking order
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To:

- 1.The District Munsif cum Judicial Magistrate
Yercaud.
- 2.The Section Officer
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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