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C.R.P.No.3986 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3986 of 2012 and
M.P.No.1 of 2012

V.Venkatesan (Died)

2.V.Sarojini

(Sole petitioner died. P-2 brought on record as LR of the deceased sole petitioner viz., Venkatesan vide order dt. 06.07.23 made in C.M.P.Nos.6391 to 6394/2020 in CRP.No.3986/2012) ... Petitioners

Vs.

1.Rajammal (Died)

2.Govindaraj

3.Kanchana

(R-1 died, R-3 brought on record as LR of the deceased R1 viz., Rajammal vide court order dt. 06.07.23 made in C.M.P.Nos.6391 to 6394/2020 in CRP.No.3986/2012) ...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decretal order in I.A.No.1541 of 2011 in O.S.No.372 of 2008 on the file of District Munsif Court, Udumalpet dated 07.08.2012.

For Petitioners : Ms.S.Janani
for Mr.A.Sivaji

For Respondents : R1-died
R2-Mr.M.N.Balakrishnan
R3-served-No appearance



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below allowing the petition filed by the respondents/defendants to condone the delay of 153 days in filing petition to set aside the *ex parte* decree passed against them.

2. The petitioner herein filed a suit for declaration and injunction. The said suit was decreed *ex parte* on 03.12.2008 due to non-appearance of the respondents. Thereafter, the respondents filed an application to set aside the *ex parte* decree with the petition to condone the delay of 153 days in filing the said petition. In the affidavit filed in support of the condone delay petition, it was stated by the respondents that 2nd respondent, who is the son of deceased 1st respondent was in charge of the legal proceedings and at the relevant point of time, he was affected by fever and hence, he could not appear before the Court and follow the case. The Court below accepting the reason given by the respondents in the sworn affidavit exercised discretion in favour of respondents and condoned the delay.



C.R.P.No.3986 of 20

3. The learned counsel for the petitioner submitted that respondents failed to prove the averment made in the affidavit as if the 2nd respondent was affected due to fever at the relevant point of time. The Court below, taking into consideration the length of delay and the averment made in the sworn affidavit filed in support of condone delay application, adopted liberal approach and exercised discretion in favour of respondents and condoned the delay in filing petition to set aside the *exparte* decree. I do not find any illegality or irregularity in the order passed by the Court below. The Court below is directed to take up the petition to set aside the *exparte* decree and dispose of the same in accordance with law.

4. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2024

Index : Yes / No

Internet : Yes / No

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C.R.P.No.3986 of 2012

S.SOUNTHAR, J.

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To

The District Munsif Court, Udumalpet

C.R.P.No.3986 of 2012

01.02.2024

4/4