



CRP.No.1460 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

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1.Pirudi @ Aarvaan
2.Masthi

... Petitioners / Defendants1 & 3

Vs

1.Thiyagarajan
2.Pilaiyakkannan @ Maathan

... Respondents /Plaintiff,
2nd Defendant

Prayer : Civil Revision Petition filed under Section 115 of CPC praying to set aside the fair and decretal order dated 11.01.2024 made in I.A.No.1 of 2021 in O.S.No.414 of 2010 on the file of the learned District Munsif Court, Anthiyur by allowing this civil revision petition.

For Petitioners : Ms.R.Adithya Shri



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ORDER

This civil revision petition arises against the order of the learned District Munsif, Anthiyur, in I.A.No.1/2021 in O.S.No.414/2010. The defendants 1 and 3 are the revision petitioners herein, and the first respondent is the plaintiff.

2. The suit in O.S.No.414/2010 is for declaration and for permanent injunction. The defendants remained *exparte* and the suit came to be decreed on 08.09.2011. The petitioners / defendants 1 & 3 filed an application in I.A.No.1 of 2021 to set aside the *exparte* decree. Of course, this application accompanied a condonation delay petition praying for the condonation of 3607 days delay. According to them, the reason for delay was that the second defendant / second respondent namely Pilaiyakannan @ Maathan, who has been prosecuting the case on their behalf, did not approach the Court to conduct the case, and this fact they came to know only through their counsel, who was appointed in 2021, when Court summons were issued to them in execution proceedings.



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3. The learned Trial Judge dismissed the application on the ground that contradictory statements were made by these defendant in the affidavit filed in support of this application, that in one paragraph they would plead that these defendants came to know of the suit proceedings only at the time when they were summoned in execution proceedings, whereas in the subsequent paragraph, they contend that the second defendant had assured that he would conduct the case on behalf of these defendants.

4. Aggrieved by the dismissal order in I.A.No.1/2021, the revision petitioners are before this Court.

5. Heard Ms.R.Adithya Shri, learned counsel for the petitioners.

6. Ms.R.Adithya Shri would submit that the petitioners are illiterate persons. Their mother tongue is Chola language. They can speak Kannada and Tamil, but they are not literates in Kannada and Tamil. Therefore, the Court should exercise discretion in condonation of delay.

7. For the purpose of condonation of delay, *sine qua non* is the existence



of "sufficient cause". It is not a case where the defendants 1 and 3 were not served with summons. Both these defendants in unison submitted that they have requested the second defendant to take care of the suit proceedings. The second defendant who remained *exparte* is not a third party and he is the own brother of defendants 1 and 3. The fact that the petitioners are illiterate, cannot be a consideration for the delay of nearly ten years in filing an application to set aside the *exparte* decree.

8. The learned counsel would submit that the learned Trial Judge has not complied with the requirements of Order XX Rule 4 and 5, and in particular, she drew my attention to the ratio in ***R.Stella Vs. Antony Francis, 2019 5 L.W.161***, in order to substantiate her case. The ratio of this judgment shows that the learned Judge must consider the facts when there is no contra-evidence, and must look at the uncontroverted evidence of the plaintiff who entered the witness box. The discussion exists in the present case. It is clear in paragraph No.9 of the order passed by the learned District Munsif, Anthiyur. The reasons given by the learned Trial Judge to decree the suit is not cryptic and laconic. The reasons stated by the learned Trial Judge appeared to have been laconic to Ms.K.Adithya Shri, perhaps they are not



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liking to the counsel.

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9. In my opinion, the learned trial Judge has given valid reasons in paragraph No.9 of the impugned order, and the order complies with the requirements of Order XX Rule 4 of CPC. Hence, I do not find any reason to differ from the same, and thereby, the order of the learned Trial Judge in I.A.No.1/2021 in O.S.No.414 of 2010 is hereby confirmed.

9. To conclude, the revision petition stands dismissed. No costs.

10.04.2024

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order
ds

To

1.The District Munsif Court
Anthiyur.

2.The Section Officer
VR Section, High Court, Madras.



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V.LAKSHMINARAYANAN,J.

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