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CRP.No.1451 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.1451 of 2022
and CMP.No.7513 of 2022

1.Rani
2.Jaminthar
3.Prakash

...Petitioners/Defendants

Vs

Manickam

...Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the fair and final order dated 08.02.2022 made in I.A.No.4 of 2021 in O.S.No.107 of 2018 on the file of the Principal District Munsif Court, Bhavani, Erode District.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : Mr.K.Sasindran

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants praying to condone the delay of 652 days in filing the petition to set aside the ex-parte order dated 08.02.2022 passed in I.A.No.4 of 2021 in O.S.No.107 of



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2018 on the file of the Principal District Munsif Court, Bhavani, Erode District. Wherein the petitioner herein has filed petition to condone the delay of 652 days and the said petition was dismissed by the trial Court.

2. According to the petitioners/defendants, the respondent herein/plaintiff filed suit before the trial Court for relief of partition and separate possession of the suit properties. The plaintiff claimed that she is the daughter of first wife; the petitioners/defendants are second wife and her sons. When the case was posted for filing written statement, they did not file written statement, due to not filing of written statement, suit was decreed on 30.04.2019. Thereafter, the petitioners/defendants came to know the ex-parte decree after receiving final decree proceedings notice dated 25.09.2019. According to the defendants, only at that time, they came to know about the case status.

3. It is further contention of the petitioners that first petitioner/1st defendant is the mother of the petitioners 2 and 3/defendants 2 and 3 and since her sons were out of station and that the first defendant was not doing well, she was unable to follow the case and could not instruct the advocate in respect of filing written statement. Therefore, in filing the petition to set aside the exparte order, delay of 652 days occurred. In such circumstances, the trial



Court dismissed the petition on the ground that already the case was posted for filing written statement and ample chances were given to the petitioners/defendants. Further due to non filing of any documents to substantiate their contentions, the trial court dismissed the I.A. As against the said order passed by the trial Court, this civil revision petition is filed.

4. The learned counsel for the respondent-plaintiff filed counter statement before the trial Court stating that the petitioners-defendants have not filed any written statement when the case was posted on 06.02.2019. Thereafter, the case was posted for cross examination of petitioners-defendants. Even on that date, the defendants were absent. Hence, exparte decree was passed on 30.04.2019. Thereafter, The plaintiff-respondent filed final decree petition. At that time only, the revision petitioners/defendants filed I.A., seeking to set aside the exparte decree with delay petition.

5. The learned counsel for the petitioners-defendants would contend that the defendants filed written statement subsequently and only due to the fact that the 3rd defendant was in abroad and the 2nd defendant was also not in station, the 1st defendant who was looking after the case was unable to file written statement due to illness. The trial Court failed to consider the said reasons and dismissed the I.A.



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6. The learned counsel for the respondent/plaintiff submits that the reasons stated by the petitioners-defendants for the delay of 652 days are not genuine and since they failed to give proper explanation, the trial court rightly dismissed the I.A. The trial court also found that there is no reason stated in the affidavit for such delay and no documents were filed to prove the illness suffered by the 1st revision petitioner/1st defendant. In such circumstances, the trial court findings in the I.A., cannot be found fault with.

7. However, the learned counsel for the respondent-plaintiff after elaborate arguments fairly conceded to dispose the case on merits.

8. This Court heard both sides and perused the records.

9. In this case the petitioners being defendants in the main suit have not filed their written statement and the trial Court passed ex-parte decree against them and they filed petition to set aside the ex-parte decree passed against them with condone delay petition. The said petition was filed stating that 2nd and the 3rd defendants were out of station and the case was conducted by 1st defendant and she was not doing well due to her old age, thereby delay of 652 days occurred. In fact the Hon'ble Supreme Court exempted the Limitation period from 15.03.2020 to 28.02.2022 and thereby the actual days of delay is



321 days. Though the petitioners have stated the said reasons the respondents initially objected, however after elaborate arguments, fairly conceded that since the suit is filed for partition a chance may be given to the defendants to dispose the case on merits.

10. Considering the reasons stated in the affidavit that the 1st petitioner- 1st defendant is not doing well and thereafter due to covid period and the defendants could not follow the case and also considering the nature of relief sought for in the main suit and in order to give fair chance to the defendants to defend the case, this court is of the view that it is appropriate to allow this petition. Accordingly, this revision petition is liable to be allowed. The trial Court ought to have taken liberal approach and given chance to the petitioners by considering the nature of relief sought for by the plaintiff in the suit. Therefore, the order passed by the trial Court is liable to be set aside.

11. In the result, the impugned order passed in I.A.No.4 of 2021 in O.S.No.107 of 2018 dated 08.02.2022 is set aside. The prayer sought for in I.A.No.4 of 2021 stands allowed. The trial Court is directed to number the petition filed to set aside the exparte order, if it is otherwise in order and dispose of the same within a period of two months from the date of receipt of copy of this order.



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12. This civil revision petition is allowed on the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

15.04.2024

Index : Yes/No

Speaking order/non-speaking order

mpa

To

The Principal District Munsif Court, Bhavani, Erode District.

P.DHANABAL, J.,

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