



CRP. NPD.No.2042 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.11.2024

Pronounced on:15.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. NPD. No.2042 of 2022
and CMP. No.10497 of 2022

1.Palaniammal
2.Manickam
3.Subramaniam
4.Vijayashanthi
5.Ramasamy
6.Muthusamy

... Petitioners

Vs

1.Ragunathan
2.Sekar

... Respondents

Prayer: The Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order passed by the learned District Munsif, Sathyamangalam in I.A. No.2 of 2019 in O.S. No.29 of 2016 dated 19.04.2021.

For Petitioners : Mr.S.Parthasarathy

For Respondents : Mr.K.A.Mariappan



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ORDER

The defendants/petitioners in I.A. No.2 of 2019 in O.S. No.29 of 2016 have filed an Application to condone the delay of 835 days in seeking to set aside the exparte decree and being unsuccessful therein, have filed the present revision petition.

2. I have heard Mr.S.Parthasarathy, learned counsel for the revision petitioners and Mr.K.A.Mariappan, learned counsel for the respondents.

3. Mr.S.Parthasarathy, learned counsel for the petitioners would submit that the suit is one for declaration of easmentary right of the plaintiffs and for consequential permanent and mandatory injunction and the valuable rights of the revision petitioners are at stake and unless the delay is condoned and an opportunity is given them to defend the suit, it would lead to grave injustice being meted out to the defendants.

4. He would further submit that the petitioners had given valid reasons for not appearing and contesting the suit and had sufficiently



explained the delay of 835 days. He would therefore pray for an opportunity being given to the petitioners to contest the suit on merits.

5. Per contra, the learned counsel for the respondents/plaintiffs would submit that the delay of 835 days is inordinate and has not been satisfactorily explained by the petitioners and rightly, the Trial Court has dismissed the condonation of delay Application filed under Section 5 of the Limitation Act, 1963. The learned counsel would also place reliance on the Division Bench order of this Court in *The Project Director, National Highways Vs. B.Rajeswari and Another* in CMP. (MD). No.9180 of 2024 in CMA(MD) SR. No.79016 of 2023, where the Hon'ble Division Bench of this Court held that when the delay has not been properly explained and no sufficient cause has been made out, then the delay cannot be condoned and that though the expression '*sufficient cause*' should be given a liberal interpretation to ensure the substantial justice is done, at the same time, negligence, inaction and lack of bonafides when found, cannot be accepted for condonation of delay.

6. I have carefully considered the rival submissions advanced by the learned counsel on either side.



7. The petitioners as defendants allowed a decree to be passed ex-parte and after a lapse of 835 days, they have approached the Court under Section 5 of the Limitation Act, 1963 seeking condonation of the said delay. The reasons assigned in the affidavit on that the petitioner was suffering from jaundice and he was not able to contact the counsel to give instructions and only after recovery from the jaundice, they have tried to contact the counsel and in the meantime, the petitioner met with an accident in the year, 2017 and therefore, he had to take treatment for the same, by that time, the decree had been passed and delay was also occasioned.

8. First and foremost, there are six defendants in the suit and even assuming without admitting that one of them was suffering from jaundice and was unable to contact the counsel to give instructions and to continue to the suit, there is absolutely no explanation as to why the other petitioners numbering 5, did not take any diligent steps to defend the suit. Similarly, it is not even the case of the petitioners that all of them met with accident.



9. Further, it is also seen that after the decree came to be passed, the respondents herein also filed an Execution Petition in E.P. No.30 of 2017. In the said Execution Proceedings, the revision petitioners entered appearance, through a counsel on 05.10.2017 and subsequently, the matter was adjourned on several dates before the Execution Petition came to be dismissed for default. Thereafter, the respondents herein filed another Execution Petition in E.P. No.1 of 2018 and in the said Execution Petition also, the petitioners were served with notice and that they were set exparte on 03.03.2018. Only much thereafter, the Application has been filed in I.A. No. 2 of 2019 seeking condonation of delay. Therefore, it is clear from the above that, even assuming the petitioners were not able to contact their counsel, at least in October 2017 itself, they had knowledge of the exparte decree having been passed on 07.10.2016. Despite entering appearance in the execution stage, they never took any steps to set aside the exparte decree and instead they only sought for adjournments in the Execution Petition and even when the second Execution Petition was filed pursuant to the first Execution Petition being dismissed for default, the petitioners were served and did not even file their counter, for which they were set ex-parte and as against the same, an application was also filed in EA. No.65 of 2018 for setting



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aside the said ex- parte order. Even at that time, no application was filed to set aside the exparte decree in the suit along with an appropriate condonation of delay.

10. Thus, in the facts and circumstances of present case, there is absolute and total inaction on the part of the petitioners in not taking effective and timely steps to defend the suit, despite knowledge of the said exparte decree as early as in October 2017 itself. Therefore, the Trial Court has rightly appreciated the facts and circumstances and dismissed the application for condonation of delay of 835 days. I neither see any merits in this revision nor grounds to interfere with the well considered order of the Trial Court.

11. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

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Index: Yes/No

Speaking order/Non-speaking order
rkp

To

1. The District Munsif, Sathyamangalam.



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

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P.B.BALAJI, J.

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**Pre-Delivery Order in
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and CMP. No.10497 of 2022**

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