



CRP. No.1581 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

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THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P(NPD) No.1581 of 2020

& CMP No.9633 of 2020

Bhuvaneswari

... Petitioner

Vs.

1.Baby Ammal

2.Rajavel

.. respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 20.12.2019 passed in I.A.No.174 of 2019 in O.S.No.284 of 2015 on the file of the Principal District Munsif Court, Thirukoilur.

For Petitioner

: Mr.S.Kadarkarai

For Respondents

: No appearance

ORDER

This Civil Revision Petition has been filed as against the order dated 20.12.2019 passed in I.A.No.174 of 2019 in O.S.No.284 of 2015 on the file of the Principal District Munsif Court, Thirukoilur.



2. The petitioner is the plaintiff and the respondents are the defendants in the suit filed for declaration and for mandatory injunction.

Since the respondents failed to appear and contest the case, an ex-parte order was passed on 21.12.2016. The respondents filed an application under Section 5 of the Limitation Act in IA.No.174 of 2019 seeking to condone the delay of 693 days in filing the petition to set aside the *ex parte* order.

3. The reasons stated to seek condonation of delay of 693 days are that the first respondent i.e., the mother of the second respondent, owing to her old age and physical illness, could not get away from her bed from October 2015 onwards. While so, the second respondent also, from February 2016 onwards, frequently suffering from stomach ache and diarrhea. Further, even after receiving the suit summons, due to physical illness and also suffering from jaundice for a long time, for which he was taking treatment from local Practitioners. Hence, they could not engage a counsel to contest the case and they were totally not at all aware of the passing of the *ex parte* decree on 21.12.2016. Subsequently, after getting fully recovered from the ailments, at the fag end of November, 2018, they received a notice from the Court in EP No.74 of 2018 and thereupon, they



consulted their counsel and then only, they came to know about passing of the *ex parte* decree dated 21.12.2016.

4. Though the petitioner resisted the delay condonation petition, the Court below allowed the same with a cost of Rs.1000/- payable to the petitioner. The said order dated 20.12.2019 is under challenge in this present Revision Petition.

5. Heard the learned counsel for the petitioner.

6. In spite of service of notice, there is no representation for the respondents. Notice sent to the second respondent is returned with an endorsement "unclaimed" and as such it has been treated as notice deemed served.

7. The learned counsel for the petitioner submits that the reasons stated by the respondents to condone the delay of 693 days are not convincing and acceptable due to the reason that the respondents have been afforded with ample opportunity to participate in the suit proceedings. But



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they remained *ex parte* and after 693 days of passing *ex parte* decree, they approached the Court below by filing a petition to set aside the *ex parte* decree along with a petition to condone the delay of 693 days. The learned counsel further contends that the Court below, without considering the objections raised by the petitioner, merely, observing the principles of natural justice, allowed the delay condonation petition. The learned counsel further contends that in deciding the objections seeking delay condonation under Section 5 of the Limitation Act, absolutely there is no scope to observe the principles of natural justice. As such, the order dated 20.12.2019 in IA No.174 of 2019 passed by the Principal District Munsif, Thirukoilur is perverse, illegal and sought to set aside the same by allowing this Civil Revision Petition.

8.This Court has carefully considered the submissions of the learned counsel for the petitioner and perused the material available on record.

9.On perusal of the order dated 20.12.2019 in I.A.No.174 of 2019 passed by the learned Principal District Munsif, Thirukoilur, it appears that the delay of 693 days was condoned considering the principles of natural



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justice even though proper reasons were not assigned. The Apex Court and various High Courts, time and again declared that the petition filed to condone the delay, the parties have to show "sufficient cause" to condone the delay. Admittedly, in the present case, "sufficient cause" is not shown by the respondents to seek condonation of the abnormal delay of 693 days. The reasons stated by them about their ill health also not supported by any medical reports or documents.

10. Under these circumstances, this Court is of the considered opinion that the Court below committed an error in allowing the application filed by the respondents to condone the delay of 693 days in the absence of "sufficient cause" and accordingly, it is liable to be set aside.

11. For the above said reasons, this Civil Revision Petition is allowed and order dated 20.12.2019 passed in I.A.No.174 of 2019 in O.S.No.284 of 2015 on the file of the learned Principal District Munsif, Thirukoilur, is hereby set aside.

BATTU DEVANAND.J.,



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No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

To

The learned Principal District Munsif Court,
Thirukoilur

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