



C.R.P.(PD).No.2228 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2228 of 2021
and CMP.No.16935 of 2021

Thanganila

... Petitioner

vs.

1.Subramaniyan @ Padaakkattai
2.Kaliyan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 19.02.2021 made in I.A.No.758 of 2018 in O.S.No.3 of 2012 on the file of the learned I Additional District Munsif, Kallakurichi and allow the Civil Revision Petition.

For Petitioner : Mr.R.Kumaravel

For Respondents : Mr.K.Rajkumar
for M/s.R.Bharath Kumar for R1
R2-not ready notice



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ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court allowing the application filed by the first respondent/second defendant seeking to condone the delay of 683 days in filing petition to set aside the ex-parte decree passed against him on 14.10.2015.

2. The petitioner herein filed a suit for declaration of title and permanent injunction and the said suit was decreed ex-parte on 14.10.2015. Thereafter, the first respondent/second defendant filed the application to set aside the ex-parte decree along with condone delay petition on 12.11.2018. The said application was allowed by the trial Court on payment of cost of Rs.10,000/-. Aggrieved by the same, the petitioner/plaintiff is before this Court.

3. In the affidavit filed in support of the condone delay petition, it was further stated by the first respondent that he engaged a counsel and



also filed a written statement. Since his Advocate directed him to meet him only after receipt of letter from him, the first respondent went to Bangalore to earn his livelihood. It was further averred by the first respondent during March 2010, he met with an accident and suffered a fracture and he had taken treatment initially at Government Hospital, Kallakurichi, later on, at Private Hospital at Coimbatore. It was stated that letter sent by his counsel was not received by him, later on when he contacted his counsel, he acquired knowledge about ex-parte decree and filed the application to set aside the same.

4. In support of the averment found in the affidavit filed in support of the condone delay petition, the first respondent was examined as PW.1 and an independent witness was examined as PW.2. On behalf of the petitioner she was examined as RW.1 and another witness was examined as RW.2. The first respondent also filed medical documents to prove the fracture suffered by him and the treatment by marking Exs.P1 to P3.



5. Taking into consideration all the evidence on record, the Court

below, came to the conclusion that an opportunity shall be given to the first respondent to conduct the case on merits and allowed the condone delay petition on payment of cost.

6. The petitioner herein filed a suit for declaration of title and injunction. Having regard to the fact that the suit is regarding title dispute in respect of immovable property, this Court is inclined to take a liberal approach, while considering the petition to condone delay. The trial Court also had taken a liberal view of the matter and exercised its discretion by condoning the delay. The Court also imposed cost of Rs.10,000/- to be paid to the petitioner.

7. I do not find anything to interfere with the exercise of discretion by the trial Court. Accordingly, the Civil Revision Petition stands dismissed.



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8. Both the counsel for the petitioner as well respondents submit

that the trial of the suit is already over and the matter is posted for arguments.

Having regard to the stage of the suit, this Court is inclined to issue direction to the trial Court to dispose of the suit within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

29.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The I Additional District Munsif,
Kallakurichi.



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S.SOUNTHAR, J.

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