



C.R.P.(NPD).No.2111 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2111 of 2021
and C.M.P.No.16079 of 2021

1.Valliyammal
2.Nanjappan

... Petitioners

vs.

1.Jothi
2.Minor.Iniya
3.V.Kumarasamy
4.S.Madhappan
5.Giriji

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 09.04.2021 made in I.No.1 of 2019 in O.S.No.347 of 2015, on the file of the learned Subordinate Court, Bhavani by allowing this Civil Revision Petition.

For Petitioners	: Mr.N.Manokaran
For Respondents	:M/s.E.C.Ramesh for R1 to R5



WEB COPY



C.R.P.(NPD).No.2111 of 2021

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the petitioner seeking to condone the delay of 1085 days in filing the petition to set aside the ex-parte decree.

2. The respondents herein filed a suit for specific performance against the father of the petitioners namely Kuppa Gounder and obtained an ex-parte decree on 05.01.2016. Thereafter, he died. The petitioners herein who are legal representatives of the deceased Kuppa Gounder have filed an application to set aside the ex-parte decree along with the petition to condone the delay of 1085 days. In the affidavit filed in support of said application, it is stated by the petitioners that the suit summons were not served on their father Kuppa Gounder and hence the ex-parte decree obtained by respondents was not valid. According to the petitioners, their father died on 07.05.2016 and he did not know anything regarding the suit or pendency of the suit. In these circumstances, the petitioners sought for condonation of the delay.



C.R.P.(NPD).No.2111 of 2021

WEB COPY

3. The respondents herein filed a counter and resisted the condone delay petition on the ground that the suit summons were refused by the above said Kuppa Gounder and recording the same, the trial Court set him ex-parte and proceed to pass ex-parte decree. It was further averred that the averment found in the petitioners' affidavit as if the suit summons were not served on Kuppa Gounder was not correct.

4. It is seen from impugned order that the trial Court after perusing the records found the suit summon was sent initially to petitioners' father Kuppa Gounder on 04.10.2015 and the same was refused by him. Therefore, the suit summon was served by affixure. Again, suit summon was sent to said Kuppa Gounder for the second time on 18.10.2015. Even on that day, the said Kuppa Gounder refused the same and hence the summon was served on him by affixure. After perusing the endorsement made by the process server regarding refusal of summon by the father of the petitioners, the Court below rightly came to the conclusion that the suit summons was served on Kuppa Gounder and the averment made by the petitioners, as if the



C.R.P.(NPD).No.2111 of 2021

suit summon was not served on Kuppa Gounder was not correct. Hence, the averment made by the petitioners to explain huge delay of 1085 days is falsified on the strength of the official Court records. Therefore, the petitioners are not entitled to exercise of discretion in their favour. The Court below based on the official Court records came to the conclusion that the suit summons were served on father of the petitioners and hence the reason assigned by petitioners to explain the huge delay of 1085 days was not acceptable.

5. The learned counsel appearing for the petitioners submits that the petitioners also filed an application to set aside the order passed in Execution Proceedings on the ground that notice was not properly served. The present Civil Revision Petition is arising out of petition to condone the delay in filing the petition to set aside the ex-parte decree. As far as the ex-parte proceedings in execution petition is concerned, it is for the petitioners to workout their remedy in the manner known to law by filing appropriate petition.



C.R.P.(NPD).No.2111 of 2021

6. I do not find any infirmity in the order passed by the Court

below refusing to condone the huge delay of 1085 days. Consequently, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

02.01.2024

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

To

The Subordinate Court, Bhavani.



WEB COPY



C.R.P.(NPD).No.2111 of 2021

S.SOUNTHAR, J.

ub

C.R.P.(NPD).No.2111 of 2021

02.01.2024