



C.R.P.(PD).No.2353 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2353 of 2021
and CMP.No.17846 of 2021

Alagarasan

... Petitioner

vs.

Narmadha

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal orders of the learned Subordinate Judge of Harur dated 06.03.2021 in I.A.No.565 of 2017 in O.S.No.94 of 2012 and allow the above Civil Revision Petition.

For Petitioner : Mr.B.Bharath Kumar

For Respondent : No appearance



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the trial Court refusing to condone the delay of 65 days in filing the petition to set aside the ex-parte decree.

2. The respondent herein filed a suit for partition against the petitioner. When the matter was posted for cross examination of PW.1, the petitioner/defendant failed to appear before the Court and hence the ex-parte decree was passed against him on 05.11.2015. Thereafter, the petitioner filed an application to set aside the ex-parte decree in I.A.No.33 of 2016 on the ground that at relevant point of time, he was affected by jaundice. The trial Court had taken a liberal approach and allowed the said application to set aside the ex-parte decree. Thereafter, the petitioner failed to cross examine PW.1 and again ex-parte decree was passed against the petitioner on 16.03.2017. Hence, instant application has been filed to set aside the ex-parte decree with condone delay petition.



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3. In the affidavit filed in support of the condone delay petition, it was stated by the petitioner at the relevant point of time, he was suffering from jaundice and he was taking native treatment for the same. The trial Court taking into consideration previous conduct of the petitioner and the very same reason assigned in the earlier petition came to the conclusion that there was no bonafides in the claim of the petitioner and dismissed the condone delay petition.

4. The learned counsel appearing for the petitioner submitted that the relief sought for in the suit is partition and having regard to the said fact, this Court may take a liberal approach while considering the petition to condone delay in filing the petition to set aside the ex-parte decree.

5. It is settled law, while considering the petition to set aside the ex-parte decree, the previous conduct of the petitioner may not be considered. If the petitioner is able to give sufficient reasons for his failure to appear before the Court on the date of ex-parte decree the same is sufficient to set



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aside ex parte decree. In the case on hand, the petitioner in his sworn affidavit had stated that he was suffering from jaundice at the relevant point of time and had taken native treatment. Having regard to the length of delay, this Court is inclined to take a liberal approach. Further, in view of the fact that the petitioner had filed a petition to set aside the ex-parte decree after filing the final decree petition by the respondent, this Court is inclined to impose cost on the petitioner to compensate the loss to the respondent.

6. In view of the same, the Civil Revision Petition is allowed on condition that the petitioner shall deposit a sum of Rs.10,000/- towards cost to the credit of O.S.No.94 of 2012 on the file of Subordinate Judge, Harur, within a period of three weeks from the date of receipt of a copy of this order. In case the petitioner failed to deposit the amount within the stipulated time frame, the Civil Revision Petition shall stand automatically dismissed without further reference to this Court.

7. In case, the petitioner deposits the amount within time stipulated, the Civil Revision Petition stands allowed by setting aside the



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impugned order in revision and the trial Court is directed to take up the application to set aside the ex-parte decree and disposed of the matter in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2024

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

The Subordinate Judge,
Harur.



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S.SOUNTHAR, J.

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