



CRP.No.2359 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2359 of 2021
and
CMP.No.17889 of 2021

1.R.Velusamy
2.N.Palanisamy

... Petitioners

Vs.

Ramathal (Died)

1.S.K.Kandhasamy
2.S.K.Palanisamy
3.Samiyathal
4.P.Dhandapani
5.P.Saraswathi
6.K.Kannathaal
7.E.Muthulakshmi
8.R.Murugesan

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 30.07.2021 made in IA.No.18 of 2020 in O.S.No.396 of 2015 on the file of the District Munsif Court, Kangayam by allowing this Civil Revision Petition.



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For Petitioners : Mr.N.Manoharan

For Respondents : Mr.R.Asokkan for R1, R2 & R8
No appearance
R3 to R7 - Batta & memo filed

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners seeking to set aside the exparte order passed against him on 20.06.2016.

2. The defendants 4 & 7 who are the petitioners 1 & 2 were set exparte in the suit on 20.06.2016. Thereafter, the instant application was filed seeking to set aside the exparte decree on 19.12.2019. In the affidavit filed in support of the said application, the first petitioner herein had stated that he was informed by his counsel in the trial Court that the suit was decreed ex parte for not filing written statement on 20.06.2016. Unfortunately, since he was affected by severe jaundice and was bedridden for long time, he could not contact his counsel and take steps to set aside the exparte order which



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was made on 20.06.2016 for his failure to file a written statement. It was also averred by the petitioners that he was not negligent or careless. The instant application filed by the petitioners was dismissed by the Court below mainly on the ground that the application filed beyond three years is barred by limitation.

3. The learned counsel relied on the judgment of this Court in *Visalakshi Vs. Umapathy and Ors.*, reported in **2015-3-LW332**.

4. The learned counsel for the petitioners submitted that for filing the petition to set aside the exparte there is no limitation. He relied subsequently on the judgment in *Rajasekar Vs. Goindammal and Ors.*, reported in **MANU/TN/4644/2020**.

5. Heard the arguments of the learned counsel for the petitioners and there is no representation for contesting respondents 1 & 2/plaintiffs.

6. In *Rajasekar* case referred by the learned counsel for the



petitioners this Court after referring to the Visalakshi's case and the Hon'ble Apex Court judgment in **Arjun Singh case** (reported in **MANU/SC/0013/1963 = AIR 1964 SC 993**) came to the conclusion that there is no limitation in filing an application to set aside the exparte order.

7. I had occasion to consider the issue involved in the present case in **Duraisamy Vs. Arvindh and others, in CRP.(PD).No.2569 of 2021**, wherein it was held as follows:

*“7.Since the law laid down by this Court in **Rajasekar Vs. Govindammal (Late) 1.Dhavamani** reported in **2020 (6) CTC 724** is based on earlier Supreme Court judgment. I prefer to follow the same. Accordingly, I hold that there is no limitation for filing application under Order 9 Rule 7 of CPC to set aside the ex-parte order. The said application can be filed at any time before the delivery of the judgment. Order 9 Rule 7 of CPC, reads as follows:*

“7.Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance:- Where the Court has adjourned the hearing of the suit ex-parte, and the defendant, at or before such hearing, appears and



assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

8. A reading of the above provision would make it clear that the person who failed to appear before the Court on particular day, subsequently, on his satisfying the Court by showing good cause, can be allowed as answer the suit as if he had appeared on the day fixed for his appearance. Therefore, at every subsequent hearing, he gets a new cause of action to file a petition to set aside ex-parte order; by showing good cause for his previous non-appearance. It is a continuing cause of action till suit is reserved for judgment or judgment is delivered. Hence, question to limitation to file petition to set aside ex-parte order will not arise as cause of action is continuing one. Further, the person who failed to appear on a particular day need not show sufficient cause as mentioned in Order 9 Rule 13 CPC. If he is able to show good cause the Court can set aside exparte order against the him. In the case on hand, the petitioner in the affidavit filed in support of the application to set aside the ex-parte order had averred that he was suffering from high fever and bed ridden and therefore, he failed to contact his counsel



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and file his vakalat. The Court shall take a liberal approach, while interpreting the procedural and law. Having regard to the fact that the suit is for partition between close relatives, this Court is inclined to take a liberal approach and allow the application filed to set aside the ex-parte order...”

8. In view of the law laid down in the above mentioned cases there is no limitation in filing a petition to set aside the exparte order. Therefore, the impugned order passed by the Court below dismissing the application on the ground of limitation is to be set aside and accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.02.2024

Index : Yes / No
Internet : Yes / No
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The District Munsif Court, Kangayam.



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S.SOUNTHAR, J.

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