



WEB COPY



CRP.No.1983 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.1983 of 2022

1.Syed Manohar
2.Pradeep Kumar

... Petitioners

Versus

R.Mala

... Respondent

PRAYER : Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07-06-2018 in I.A.No.1753 of 2015 in O.S.No.92 of 2012 passed by the Learned District Munsif, Ambattur.

For petitioner : Mr.M.Radhakrishnan

For Respondent : Mr.M.Jagatheese

ORDER

Challenge has been made to the dismissal of the application filed under Order 9 Rule 13 of CPC and set aside the exparte decree passed against the petitioner on 07.11.2013.



2. The suit has been originally filed for permanent injunction. When the matter was posted for filing written statement, as the written statement was not filed, the decree has been passed exparte on 07.11.2013. Thereafter, application in I.A.No.1363 of 2014 has been filed to condone the delay of 236 days under Section 5 of the Limitation Act, the said application has been ordered by the Trial Court with costs of Rs.300/- payable by the revision petitioners. Thereafter, application under Order 9 Rule 13 has been taken out before the successive learned District Munsif, however, the said application has been dismissed. Challenging the same, the present revision has been filed.

3. Heard both sides and perused the materials placed on record. When the Court on earlier occasion condoned the delay of 236 days accepting the reasons, the learned District Munsif had taken a contrary view on the same reasons cannot be countenanced. After-all Section 5 of the Limitation Act is not to destroy the remedy. When the delay has already been condoned, the Trial Court ought to have granted opportunity to the parties to participate in the Trial, rather, on technical grounds, the defence of the petitioner have been totally shut. Therefore, when the delay is already condoned, the Trial Court while deciding the application under



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Order 9 Rule 13, once again going into the reasons adduced for condoning the delay of 236 days and dismissing the application is nothing but sheer non application of mind. In fact, the Trial Judge has thought itself as an appellate authority and taken a contrary view, particularly in the earlier order, his predecessor had condoned the delay accepting the reasons. Whereas, in the later application, the District Munsif has gone into the reasons adduced for the delay of 236 days which was already condoned and dismissed the application, which is in view of the Court is not a proper approach.

4. Thus, this Court in order to give proper opportunity to the petitioner is inclined to set aside the impugned order dated 07.06.2018 and the same is hereby set aside. The Trial Court is directed to take up the suit and dispose of the same on its own merits.

5. Accordingly, this revision stands allowed. No costs.

13.12.2024

Index : Yes / No
Speaking/non speaking order
dhk



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N. SATHISH KUMAR, J.

dhk

To

The District Munsif,
District Munsif Court, Ambattur

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