



C.R.P.No.4156 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4156 of 2019
and
CMP.No.27091 of 2019

1.L.Madhavan
2.L.Kuppan
3.Sakila

... Petitioners

Vs.

1.P.M.Sathish
2.P.M.Mahesh

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decretal order passed in I.A.No.1 of 2019 in O.S.No.66 of 2009 dated 19.08.2019 by the District Munsif Court, Ponneri, Thiruvallur District.

For Petitioner : Mr.P.Dhananjayan

For Respondents :Mr.R.Munusamy



ORDER

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The revision is filed challenging the order passed by the Court below dismissing the application filed by the petitioners seeking to condone the delay of 532 days in filing petition to set aside the exparte decree passed against them on 05.09.2017.

2.The respondents herein filed a suit for declaration of title and permanent injunction. The suit was decreed exparte against the revision petitioners on 05.09.2017. Thereafter, the petitioners preferred I.A.No.1 of 2019 to condone the delay of 532 days in filing petition to set aside the exparte decree. In the affidavit filed in support of condone delay petition, it was stated by the petitioners that interlocutory applications filed in the main suit namely I.A.Nos.190 to 193 of 2009 were dismissed by the Trial Court on 06.01.2010 and the same was taken as the final order in the suit by the petitioners and therefore, the petitioners failed to contact their counsel. It was further averred that the fact of exparte decree came to their knowledge only after receipt of the legal notice issued by the respondents' counsel on 07.03.2019. Immediately,



the present application has been preferred on 21.03.2019.

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3. The condone delay petition was resisted by the respondents by filing a detailed counter mentioning the knowledge of the petitioners about the proceedings before the Trial Court.

4. The Trial Court dismissed the application filed by the petitioners on the ground that subsequent to the dismissal of the interlocutory applications referred to in the affidavit of the petitioners, they filed applications before the Trial Court for re-open and re-call of P.W.1 in I.A.No.522 and 523 of 2016. Therefore, the Trial Court recorded the finding that averment made by the petitioners in their affidavit as if the orders passed in earlier interlocutory applications on 06.01.2010 was taken as a final order in the suit was nothing but false. Had it been taken as a final order, there was no occasion for the petitioners to file applications to re-open and recall the P.W.1 in I.A.Nos.522 and 523 of 2016. It is also recorded by the Trial Court that on 08.06.2017, the counsel for the petitioners reported no instruction and thereafter, the Court ordered notice to the petitioners and after service of said notice on the



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petitioners also, they failed to appear before the Court and hence, they were set
exparte on 28.08.2017 and subsequently on 05.09.2017, the exparte decree
was passed.

5. Therefore, it is clear that petitioners have come to the Court with false
averment as if they thought that the orders passed on 06.01.2010 in
interlocutory applications were the final orders passed in the suit. When the
petitioners approached the Court with the false averment, the Court cannot
exercise its discretion in their favour. Therefore, the Trial Court rightly
disbelieved the reasons assigned by the petitioners in the affidavit filed in
support of condone delay petition and dismissed the same. I do not find any
material irregularity in the order passed by the Trial Court and accordingly, the
Civil Revision Petition is dismissed. No costs. Consequently, connected
miscellaneous petition is closed.

02.01.2024

Index : Yes / No
Internet : Yes / No
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To

The learned District Munsif Court,
Ponneri, Thiruvallur District.



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S.SOUNTHAR, J.

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