



C.R.P.[NPD].No.4460 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

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1. Selvaraj
2. Sekar
3. Gopi

. . . Petitioner

Versus

1. Kannivel
2. Selvam
3. Kavitha
4. Nirmala

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal Order dated 08.07.2024 passed in I.A.No.1 of 2022 in O.S.No.304 of 2014 on the file of the Principal Sub Court, Cheyyar, Thiruvannamalai District.

For petitioner : Mr.G. RM. Palaniappan



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ORDER

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Challenge has been made against the Order of the trial Court dismissing the application filed to condone the delay of 1761 days in filing an application to set aside the exparte decree which has been made on 18.08.2017, in the present revision petition.

2. The suit has been filed for declaration and injunction in respect of the property to an extent of 54 cents. The suit has been filed based on the sale deed executed in favour of the plaintiff. The suit has been filed in the year 2017. The petitioners have been set exparte on 18.08.2017 and exparte decree has been passed. Till the date of decree, the written statement has not been filed by the defendants. The application to set aside the exparte decree has been filed in the year 2022. The reasons assigned to condone the delay of 1761 days is that the petitioners have engaged a lawyer along with first defendant, who is the brother of the first petitioner and father of the second and third petitioners. The first defendant has fell down in the year 2016 and he was not in a position to walk and he died in the year 2020. When the petitioners met their counsel, it is stated by the counsel that due to Covid, cases have not been taken. Therefore, they have not



followed the case. However, only through another advocate, they came to know that they have already been set exparte on 18.08.2017. Hence, the application has been filed to condone the delay.

3. I have perused entire materials. The learned trial Court after considering the affidavit of the petitioner and the counter filed in the application recorded a finding that the advocate has been engaged in this matter and the written statement has not been filed and ultimately, the exparte decree has been passed on 18.08.2017. After the exparte decree, the first defendant has died in the year 2020.

4. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself.



5. It is the contention of the petitioner that the first defendant has not informed about the case and therefore, they have not followed the case. Further Covid lockdown was imposed only on 24.03.2020, after three years of exparte decree. Till such period, no steps, whatsoever, has been taken by the petitioners. The petitioners cannot be mere spectators without following the case. The litigant should be vigilant in prosecuting their case. After sleeping for more than three years even before covid lockdown, now it cannot be said that as the first defendant suffered health setback from the year 2016, they are not in a position to contact the lawyer.

6. It is relevant to note that the medical records produced by the petitioner itself indicate that the first defendant suffered some health issues in the year 2019. This itself is belie the contention of the petitioner that the first defendant suffered medical issues from the year 2017. It is relevant to note that the suit has not been filed only against the first defendant. All the defendants have engaged the same lawyer. Therefore, it cannot be said that the first defendant was prosecuting the case and he did not inform the petitioners. When the medical records filed by the revision petitioner itself go against them, this Court is of the view that the reasons



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assigned in the affidavit is only for the purpose of the case. The entire delay has not been explained properly. Hence, I do not find any merits in this revision petition.

7. Accordingly, this Civil Revision Petition is dismissed.

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Index : Yes / No
Internet: Yes
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N. SATHISH KUMAR, J.

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