



C.R.P.No.4697 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4697 of 2023
and C.M.P.No.27916 of 2023

1. Lagumakka

2. Chennagowdu

... Petitioners

Vs

Prabhu

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code pleaded to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in O.S.No.173 of 2006 dated 26.06.2023 on the file of the District Munsif cum Judicial Magistrate at Denkanikottai, Krishnagiri.

For Petitioners : Mr.Venkatesh

For Respondent : Mr.A.Arvind Raj.B
for Mr.A.Sakthivel



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in O.S.No.173 of 2006 dated 26.06.2023 on the file of the District Munsif cum Judicial Magistrate at Denkanikottai, Krishnagiri, dismissing the petition filed under Section 5 of Limitation Act to condone the delay of 1912 days in filing the petition under Order 9 Rule 13 of CPC.

2. The learned counsel for petitioners submitted that the petitioners are senior citizens aged about 85 and 75 years respectively. Since the 1st petitioner is a lady, the 2nd petitioner was taking care of the litigation. While being so, the 1st petitioner fell ill and affected with Jaundice and was bed ridden for few months and during such time, the ex-parte judgment came to be passed on 22.12.2016. Subsequently, there was Covid lockdown and thereby, the petitioners were unable to file the petition within time and there had been delay of 1912 days in filing petition seeking to set aside the ex-parte order. He further submitted that the power to condone the delay is a discretionary power and the trial court had failed to exercise the discretion and thereby, the present revision has been filed.

3. Per contra, the learned counsel representing the learned counsel for the respondent, would submit that the petitioners/defendants were initially set ex-parte



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on 14.06.2006 since they did not appear after service of summon. Thereafter, they filed I.A.No.694/2006 seeking to set aside the ex-parte order and that the earlier ex-parte order was set aside vide order dated 07.12.2006 and subsequently, the petitioners had filed written statement. Thereafter, once again on 19.10.2016, when the case was posted for trial on special list, the petitioners/defendants were called absent and the learned counsel for the petitioners/defendants reported no instructions and therefore, the petitioners/defendants were set ex-parte on 19.10.2016 and subsequently, the ex-part decree came to be passed on 22.12.2016 itself. Though the 2nd petitioner claimed to have been affected with Jaundice and took treatment at Ayurveda Doctor, they had not produced any documents to substantiate the same. Even in the affidavit, the 1st petitioner has claimed to have been bed ridden only for few months and there was no explanation for the subsequent period. Further, the peak of Covid-19 pandemic was only during 2020 and there was no explanation for the delay between 2016 to 2022. Therefore, the trial Court having found that the petitioners had not shown sufficient cause to condone the enormous delay of 1912 days in filing the petition to set aside the order, had dismissed the same. Therefore, there is no infirmity or illegality in the order passed by the trial Court.



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4. Heard both sides and perused the materials available on record.

5. It is the claim of the petitioners that the 2nd petitioner who was pursuing the case was affected with Jaundice and was taking treatment at Ayurveda Doctor and during such time, the ex-parte order came to be passed on 22.12.2016. However, he had not produced any documents to substantiate the same and that there was no explanation for the period between 2016 to 2022. Therefore, the trial Court on finding that no sufficient cause had been shown by the petitioners, had dismissed the petition filed by the petitioners seeking to condone the delay of 1912 days in filing the petition to set aside the ex-parte decree.

6. This Court finds no infirmity or illegality in the order passed by the trial Court.

7. Therefore, this Civil Revision Petition is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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

The District Munsif cum Judicial Magistrate at Denkanikottai,
Krishnagiri.



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A.D.JAGADISH CHANDIRA, J.

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