



CRP.No.4856 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.4856 of 2024
and C.M.P.No.27156 of 2024

Krishnan (Deceased)
Ellammal (Deceased)
Asaithambi

. . . Petitioner

Versus

Chinnammal

. . . Respondent

PRAYER : Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order dated 03.10.2024 made in I.A.No.1 of 2023 in I.A.No.224 of 2005 in O.S.No.130 of 1997 on the file of District Munsif Court, Omalur.

For petitioner : Mr.B.Manoharan

ORDER



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Challenging the order dismissing the application to condone the delay of 1932 days in restoring the application filed for setting aside the exparte decree dated 01.11.2004, the present application has been filed.

2. The suit has been originally filed for permanent injunction against the defendants, later, the suit was amended for mandatory injunction directing the defendants herein to remove the entire construction put up in the suit property and handover the vacant possession. The suit was decreed exparte on 01.11.2004. The petitioner filed an application to set aside the exparte decree in I.A.No.224 of 2005. The said application has been dismissed for default on 21.01.2008. In pursuant to the decree, EP has been filed. At that stage, other application in I.A.No.1 of 2013 has been filed to restore the I.A.No.224 of 2005. Therefore, it is the contention of the petitioner that when the suit was posted for hearing, the petitioner went to Andhra Pradesh for coolie work and they were set exparte and thereafter, they could not follow the case. Further, once again, they went to Andhra Pradesh and thus, the petition in I.A.No.224 of 2005 was also dismissed for default. Only recently, they came to know about the execution proceedings, hence, immediately they filed application in I.A.No.1 of 2013 to restore the application filed in I.A.No.224 of 2005. The Trial Court disbelieved the explanations and rejected such



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contentions and dismissed the application in I.A.No.1 of 2013. Challenging the dismissal order, this revision.

3. The learned counsel for the petitioner submitted that they went to Andhra Pradesh for coolie work and therefore, they could not follow the case. Hence, seeks to grant one more opportunity to contest the matter.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. The very explanation offered by the revision petitioner is vague and the explanation that he just went to Andhra Pradesh for coolie work is not a ground. Having engaged a counsel and allowed the matter to proceed exparte and even after filing application to set aside the exparte decree and that application was also dismissed for default. Thereafter, casually, they are filing application to condone the delay of 1932 days in restoring the application filed to set aside the exparte decree, which had dismissed for default.



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6.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. Having allowed the exparte decree to remain for more than 5 years, suddenly filing applications that too with vague allegations itself indicate that the application is filed only in order to drag the proceedings. Such view of the matter, I do not find any merits in this Revision and the same stand dismissed. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To

The District Munsif
District Munsif Court, Omalur



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N. SATHISH KUMAR, J.

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