



C.R.P(MD)Nos.415 and 587 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)Nos.415 and 587 of 2022

and

C.M.P(MD).No.2476 of 2022

S.Rajakumar

... Petitioner in both petitions

Vs.

1.S.Ramani Bai

2.B.Lekshmi Bai

...Respondents in both petitions

Prayer in C.R.P(MD).No.415 of 2022: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to call for the records and set aside the order and decretal order dated 24.02.2021 passed in I.A.No.12 of 2018 in O.S.No.118 of 2015 on the file of the Court of Subordinate Judge at Eraniel and dismiss the petition with costs.

Prayer in C.R.P(MD).No.587 of 2022: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to call for the records and set aside the order and decretal order dated 23.02.2022 passed in I.A.No.3 of 2021 in O.S.No.118 of 2015 on the file of the Court of Subordinate Judge at Eraniel and dismiss the petition in I.A.No.3 of 2021 in O.S.No.118 of 2015 with costs by allowing the CRP.

Petition in CRP(MD).No.587 of 2022

For Petitioner

: Mr.J.John Jayakumar

For Respondents

: Mr.M.R.Srinivasan (for R1)

No representation (for R2)



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Petition in CRP(MD).No.415 of 2022

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For Petitioner	: Mr.J.John Jayakumar
For Respondents	: Mr.M.Arjun Varman (for R1)
	No representation (for R2)

COMMON ORDER

These two civil revision petitions are directed against the fair and decreetal order dated 23.02.2022 made in I.A.No.3 of 2021 and I.A.No.12 of 2018 in O.S.No.118 of 2015 on the file of the learned Subordinate Judge, Eraniel. In the said suit, an *ex-parte* decree came to be passed on 29.11.2016. Along with an application to condone the delay of 381 days, an application for setting aside the *ex-parte* decree was filed. The trial Court, upon considering the reasons mentioned in the affidavits filed in support of the applications, allowed the said applications and set aside the *ex-parte* decree and restored the defence of the defendants. Aggrieved by the same, the present civil revision petitions are filled.

2. Mr.J.John Jayakumar, the learned counsel appearing on behalf of the petitioner would submit that on a perusal of the affidavit filed in support of the applications, it can be clear that the second defendant/first respondent herein has stated that she was undergoing treatment regarding her infertility and therefore, she could not properly follow up the suit, file the written statement



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and contest the suit. Except the said reason is mentioned, absolutely no evidence whatsoever was let in on behalf of the first respondent and in the absence of any medical certificate or proof, the trial Court ought not to have accepted the reason on the mere *ipse dixit* of the first respondent and allowed the applications. The learned counsel would further submit that the suit is of the year 2015 and on account of the order, the petitioner is put to prejudice.

3. Per contra, Mr.M.Arjun, the learned counsel appearing on behalf of the first respondent in C.R.P(MD).No.415 of 2022 would submit that the delay of 381 days was explained with proper reasons. Now, after the *ex-parte* decree was set aside, the written statement is taken on file, issues have been framed and the matter is ripe for trial. Therefore, he would submit that at this point of time, this Court need not interfere.

4. I have considered the rival submissions made on either side and perused the materials record of the case.

5. When the delay in filing the application for setting aside the *ex- parte* decree is 381 days and the reason, which was mentioned before the trial Court, is that of infertility treatment, when the trial Court, after considering the case of



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the parties, has exercised its discretion and allowed the applications, this Court does not find any compelling reason to interfere. In matters relating to infertility treatment, the parties suffer hormonal imbalance, etc., making it difficult for them to follow up the Court proceedings. It is true that the first respondent could have also filed the proof regarding medical treatment. However, considering the quantum of delay, that is 381 days, when the trial Court has exercised its jurisdiction that too on payment of costs, this Court would be slow to interfere with the same.

6. In view thereof, finding no merits, these Civil Revision Petitions are dismissed, however, considering that the original suit was filed as early as in the year 2015 and now, the same is pending as O.S.No.17 of 2022 before the learned Subordinate Judge, Eraniel, the learned Subordinate Judge, Earniel, is requested to take up the case for an early disposal and dispose of the same, in any event, not later than six months from the date of receipt of the copy of the order. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

11.07.2024

NCC:Yes/No
Index:Yes/No
Rmk



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To

1.The Subordinate Judge at Eraniel.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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