



C.R.P(MD)Nos.1782 & 1783 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.1782 & 1783 of 2019

C.R.P(MD)No.1782 of 2019:

Subbaiah

... Petitioner / Petitioner/
Defendant

Vs.

Chinnazhagi

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 29.03.2019 in I.A.No.745 of 2018 in O.S.No.88 of 2014 passed by the District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District.

C.R.P(MD)No.1783 of 2019:

Subbaiah

... Petitioner / Petitioner/
Defendant

Vs.

Vellaiyan

... Respondent/Respondent/
Plaintiff



C.R.P(MD)Nos.1782 & 1783 of 2019

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 02.04.2019 in I.A.No.744 of 2018 in O.S.No.87 of 2014 passed by the District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District.

For Petitioner : Mr.R.Balakrishnan
for Mr.K.N.Govardhanan
(In both cases)

For Respondent : Mr.A.Arun Prasad
(In both cases)

COMMON ORDER

The defendant in O.S.Nos.87 and 88 of 2014 on the file of the District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District is the revision petitioner herein.

2. The respondent herein as plaintiff had filed a suit for permanent injunction not to disturb his possession. Pending suit, the defendant had entered appearance in August 2014 and the same was adjourned on various dates in November and December 2014 for filing a written statement. Since the defendant had not filed his written statement, he was set *ex parte* on 19.12.2014 in both the suits.



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3. The defendant was set *ex parte* on 19.12.2014 and an *ex parte* decree came to be passed on 21.01.2015. The defendant had filed applications in I.A.Nos.744 and 745 of 2018 to condone the delay of 1362 days in filing an application to set aside the *ex parte* decree.

4. According to the petitioner, he was suffering from kidney disease and hence, he was taking native treatment and Siddha Treatment therefore, he was not in a position to meet his counsel. Other than the above said reason, no reasons have been assigned by the defendant. At the time of arguments, the treatment taken by the petitioner before the Primary Health Centre was produced before the trial Court across the bar. The Court has also gone into the said document and arrived at a finding that there is no reference about the Kidney disease in the said record. Therefore, the Court has proceeded to dismiss the applications in both the suits. Challenging the same, the present revision petitions have been filed.

5. According to the learned counsel appearing for the petitioner, since the petitioner was an illiterate person and he was suffering from serious kidney illness and he was taking treatment, he could not contact



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his counsel. As soon as he became well, he has met his counsel and has requested him to file an application to set aside the *ex parte* decree. Even though there is a huge delay, considering the above said facts, the delay may be condoned.

6. Per contra, the learned counsel appearing for the respondents had contended that despite giving so many opportunities, the defendant has not filed any written statement. The defendant has not explained the delay of 1362 days in filing an application to set aside the *ex parte* decree. No document has been produced to substantiate that he was suffering from Kidney disease. Hence, he prayed for dismissal of the revision petition.

7. I have carefully considered the submissions made on either side and perused the material records.

8. It could be seen from the records that the defendant in both the suits was set *ex parte* on 19.12.2014 and an *ex parte* decree came to be passed on 21.01.2015. The present application to condone the delay in filing an application under Order 9 Rule 13 of Code of Civil Procedure



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has been filed with a delay of 1362 days. The only reason assigned by the defendant in both the suits is that he was suffering from Kidney disease and he was taking native treatment. In support of the said claim, the petitioner has submitted a health record maintained by Primary Health Centre which does not disclose any Kidney disease on the part of the petitioner. If it is Kidney disease, certainly some records would be available to indicate the nature of treatment taken by the revision petitioner and that too for a period of 4 years.

9. In view of the above said facts, it is clear that the defendant has not properly explained the huge delay of 1362 days and therefore, the trial Court was right in dismissing the application to condone the delay in both the suits. There are no merits in the revision petitions.

10. Hence, both the Civil Revision Petitions stand dismissed. No costs.

10.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The District Munsif cum
Judicial Magistrate,
Thirumayam, Pudukkottai District.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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