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CRP.No.2617 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.2617 of 2015
and MP.No.1 of 2015

Elumalai

... Petitioner

Versus

1.M.Krishnan
2.Nandagopal
3.Rajendran

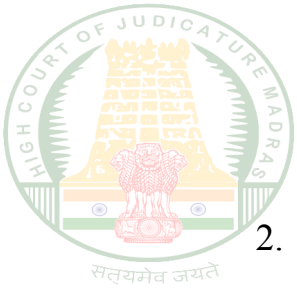
... Respondents

Prayer: Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair order dated 28.02.2015 made in I.A.No.1874 of 2014 in O.S.No.325 of 2008 on the file of the Additional District Munsif, Gingee.

For petitioner : Mr.Rajesh Vivekananthan
For respondents : Mr.S.Rajendran for R1
R2- Died
R3-Court notice sent, service awaited

ORDER

Challenging the impugned order rejecting the application filed to condone the delay of 110 days in filing the petition to set aside the exparte decree, the present revision has been filed.



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2. The suit has been originally filed by the plaintiff/first respondent in O.S.No.325 of 208 on the file of the Additional District Munsif, Gingee for declaration and permanent injunction. The suit has been decreed exparte vide decree and judgment dated 09.06.2014. The said exparte decree is sought to be set aside on the ground that the second respondent was aged and the petitioner and third respondent were taking care of the second respondent, therefore, the application could not be filed immediately. The same was opposed by the respondent/plaintiff on the ground that no sufficient cause has been shown. The Trial Court taking note of the fact that the chief examination was conducted on 11.12.2014 and exhibits A1 to A17 were marked on 18.12.2014, thereafter, the matter was adjourned for 5 months for cross examination, as the cross examination was not done, they were set exparte and in the applications, the defendants have not shown sufficient cause, thus, dismissed the application vide the impugned order. Challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner submitted that the second respondent was aged, the petitioner and third respondent were taking care of the second respondent, therefore, the application could not be filed immediately.



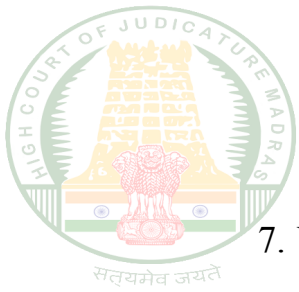
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Further, they have valid defence, if opportunity is given they will complete the trial within a reasonable time. Hence, seeks for liberal approach to contest the suit on merits.

4. The learned counsel for the first respondent/plaintiff submitted that the defendants have not properly explained each delay and no sufficient cause is shown. Thus, seeks for dismissal of this revision.

5. Heard both sides and perused the materials placed on record.

6. It is stated by the learned counsel for the petitioner/second defendant that the first defendant/Nandagopal/second respondent is died, however, the fact remains that the revision has been filed by the second defendant and no order is going to be passed against a dead person and the legal heirs of the first defendant can be brought on record before the Trial Court. Such view of the matter, this Court is inclined to dispose of the revision.



7. What is required under Order 9 Rule 13 of CPC is sufficient cause which prevented the defendants from appearing before the Court when the suit was called on for hearing. Therefore, it is imperative that sufficient cause has to be shown by the party. It is relevant to note that though the party has not established sufficient cause while deciding whether there is sufficient cause or not, the Court must also bear in mind the object of doing substantive justice. The conduct of the party in the present case though is not appealing to the satisfaction of this Court, the same cannot be a ground to take away the substantive right. This Court is of the view that negligence on the party on some aspects may be condoned on payment of costs. In this connection, it is worthwhile to refer to the observations made in the case of *M.K.Prasad vs. P.Arumugam* reported in (2001) 6 SCC 176:

“ 10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the



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property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside ex parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex parte decree as well.”

Emphasis supplied

8. Further, it is relevant to note that the Hon'ble Apex Court in the case of *Robin Thapa vs. Rohit Dora* reported in (2019) 7 SCC 359 held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits. Therefore, this Court is inclined to grant one more opportunity to contest the suit on merits by the parties.

9. Accordingly, this Court grants one more opportunity to the defendants to



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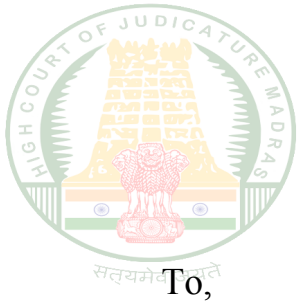
contest the matter, on merits, subject to payment of costs of Rs.5,000/- payable to

the plaintiff within a period of two weeks month from today. On such payment, the impugned application be set aside and the Trial Court shall decide the petition under Order IX Rule 13 of CPC. In the event, the Order IX Rule 13 petition is allowed, the Trial Court shall decide the suit on merits and dispose of the same within a period of three months thereafter. In the event, costs is not received by the plaintiff, the same may be deposited in the credit of the suit. The plaintiff can bring the legal heirs of the second respondent in the above suit.

10. In view of the above, this revision stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Speaking/non speaking order
dhk



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To,
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1.The Additional District Munsif
Additional District Munsif Court
Gingee

2.The Section Officer
VR Section, Madras High Court

N. SATHISH KUMAR, J.



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