



C.R.P. No.1453 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2025

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THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

CRP.No.1453 of 2023
and
C.M.P. No.9702 of 2023

Ramalingam S/o. Late Raja Gounder ... Petitioner

Vs

S. Balamurugan S/o. R. Sekar ... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Cr.P.C. praying to set aside the fair and decretal order passed in I.A. No.3 of 2022 in O.S. No.1244 of 2012 dated 27.01.2023 on the file of the learned II Additional District Munsif, Salem.

For Petitioner : Mr. V. Sairam
For Respondent : Mr. T. Shanmugam

ORDER

This petition has been filed challenging the order passed in I.A. No.3 of 2022 in O.S. No.1244 of 2012 dated 27.01.2023.

2. The brief facts of the case are that the petitioner filed an industrial dispute in I.A. No.3 of 2022 in O.S. No.1244 of 2012 on the file of the learned II Additional District Munsif, Salem. The respondent / Plaintiff had filed a Suit seeking for mandatory injunction and permanent injunction and



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for other reliefs against the petitioner. The above Suit was posted for trial on 12.07.2018. Since the petitioner / defendant and his counsel were absent, an exparte decree came to be passed on 12.07.2018. The petitioner / defendant contended that he did not get proper instructions from his counsel and due to lock down on account of COVID-19, he was unable to attend the Court and only after receipt of notice in R.E.P. No.1 of 2022, he had knowledge about the exparte decree and hence he filed an application to set aside the exparte decree with the delay of 1219 days. The petitioner's counsel filed an application under Section 5 of Limitation Act to condone delay of 1219 days, in which the respondent / Plaintiff had filed a counter. The Trial Court, by finding that the petitioner has not shown sufficient cause, had dismissed the application. Against which, the present civil revision petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner was set exparte on 12.07.2018 and due to lack of communication and due to COVID lock down, the petitioner was unable to file the petition to set aside the exparte within time and thereby, there had been a delay of 1219 days. He would further submit that the respondent / plaintiff is none other than the petitioner's uncle and that the petitioner has shown sufficient cause and he can be given an opportunity to file an application to set aside the order



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and prayed to allow the civil revision petition on fixation of terms.

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4. The learned counsel appearing for the respondent would submit that the petitioner was set exparte after due notice, on 08.11.2013 itself. Subsequently, during the trial, the respondent / Plaintiff had let in evidence and the case was decreed on 12.07.2018. Apart from the petitioner, there are three other defendants and they had contested the Suit and judgment was passed on merits and further, the petitioner who was living in the next door, is well aware of the proceedings, had purposely avoided appearing before the Court and the trial Court has rightly finding that the petitioner had slept over his remedy and adopted dilutory tactics, has dismissed the petition. He would further submit that there is no infirmity in the order passed by the trial Court and therefore, he seeks dismissal of the civil revision petition.

5. Heard both sides and perused all the materials available on record.

6. The Suit has been filed by the respondent / Plaintiff for mandatory injunction and permanent injunction and other reliefs against the petitioner. The petitioner is none other than the relative of the respondent and he is also living in the same premises. The petitioner had been served summons in the Original Suit and thereafter, he has also engaged a counsel and thereafter, the



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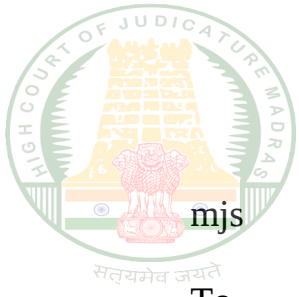
petitioner was set exparte on 08.11.2013 and after trial, the decree was passed on 12.07.2018. The petitioner claims that only after receipt of notice in R.E.P. No.1 of 2022, he came to know about the exparte decree. The petitioner also claims that since there was a COVID lock down from the year 2019, he was unable to file an application within time and therefore, there had been a delay.

7. This Court finds that lock down due to COVID pandemic was initiated only after March 2020 and not during the year 2019. In this case, the petitioner has been set exparte as early as on 08.11.2013 and the petitioner has not shown sufficient cause to condone the delay of 1219 days. Therefore, I do not find any infirmity in the order passed by the trial Court and hence, this petition has no merits and deserves to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

14.02.2025

Index : Yes/No
Speaking order/non-speaking order



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The II Additional District Munsif, Salem.

A.D.JAGADISH CHANDIRA, J.,

mjs



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