

IN THE COURT OF THE DISTRICT MUNSIF, SULURPresent : **Tmt.N.Renuga., B.A., B.L.,**

District Munsif, Sulur

Tuesday the 27th day of June 2023**I.A.No.4/2022****in****O.S.No.128/2021**

Rajaselvi

...Petitioner/Defendant

/VS/

1. V.Chandrasekar

2. P.Velmurugan

...Respondents/ Plaintiffs

This petition is coming on 20.04.2023 for final hearing before me in the presence of Thiru.P.KrishnaMoorthy, Advocate for the Petitioner and Thiru.C.P.Raghavan, and Thiru.S.Kannan, Advocate for the Respondent and upon perusing the records, and this court made the following:

ORDER

This petition filed by the petitioner Under section 5 of the Limitation Act an order to condone the delay of 65 days ie., from 14.08.2022 to 15.10.2022 to take the petition to set aside the exparte decree on file.

1. The brief averments of the affidavit filed by the petitioner as follows:

1.1. The respondents/plaintiffs have filed the suit seeking the relief of permanent injunction. The petitioner entered appearance in the above case by engaging a counsel in Namakkal. The petitioner reliable understand that the counsel engaged by petitioner in Namakkal has entrusted her case with a counsel at Sulur. The petitioner in the bona fide belief that she would have been informed about the stage of her case. The petitioner came to understand per contra, the above case came up for hearing on 05.07.2022 and as the petitioner was not informed by her counsel, the petitioner could not appear before this court, this court and on the next hearing date ie., on 14.07.2022, this Hon'ble court was to pass decree and judgment since no

written was filed.

1.2. Now only through the petitioner counsel on verifying the records the petitioner to know the about the exparte decree and judgment passed against the petitioner. The non filing of written statement on her behalf in the above suit is occasioned due to the above said reason only and the petitioner have not willfully or deliberately failed to file her written statement in the above suit. The delay happend is unfortunated and beyond her control unless the delay of days in filing the petition to set aside exparte decree is condoned the petitioner will be put to loses and hardship. Hence, the petition is to be allowed

2. The brief averments of Counter filed by the 2nd respondent and adopted by the 1st respondent as follows:

2.1. The petition is false, frivolous, vexatious and unsustainable in law and on facts. The Hon'ble court to take the steps to sent the summon to the petitioner, the petitioner received the court summon and also received the postal RPAD. The petitioner non appearance before this Hon'ble court on 28.10.2021 the petitioner called in open court and the petitioner called absent set exparty order was passed in correctly. The respondents take exparty evidence on 08.03.2022 and the Hon'ble court was rightly passed an exparty decree dated on 14.07.2022.

2.2. The Hon'ble court has posted on several opportunities given to the petitioner's not appear before this court and to time to grant for long period. The petitioner not given to any valuable specific reason to condone the delay of 65 days, and the petitioner's have to prove the every single day of delay. The petition is an abuse in process of law to drag on the proceedings. The reasons quoted in the petitioner affidavit are not true, hence the petition has to be dismissed in limine.

3. Points for Consideration:-

Whether the petition under section 5 of the Limitation Act an order to condone the delay of 65 days is to be allowed?

4. Points:-

4.1. Heard both sides. Perused the records. The petitioner is the defendant in main suit, it was filed for and permanent injunction and the court summon served and on 28.10.221 the petitioner/defendant was called for hearing, on that day, neither the counsel for defendant nor the defendant appeared. Since, the defendant was called absent. Hence, the defendant was set exparte. The delay happened is unfortunate and beyond her control unless the delay of days in filing the petition to set aside exparte decree is condoned.

4.2. The main suit for Permanent injunction, it should always desirable to decide the case on the merits and not otherwise. The reason for the delay of 65 days has explained by the petitioner is acceptable one. The respondents had suffered by allowing this application it will be compensated by way of cost.

In the result, this petition will be allowed on payment of cost of Rs.1000/- to be paid by the Petitioner/Defendant to the Respondents/Plaintiffs on or before 10.07.2023. On failure this petition stands dismissed automatically. For compliance Call on 10.07.2023

Dictated to the Steno-typist and directly typed by her, corrected and pronounced by me in open court this the 27th day of June 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioner side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

10.07.2023

This petition is coming on this day for final hearing before me in the presence of Thiru.P.KrishnaMoorthy, Advocate for the Petitioner and Thiru.C.P.Raghavan, and Thiru.S.Kannan, Advocate for the Respondent and upon perusing the records, and this court made the following:

ORDER

Cost of Rs.1000/- paid, memo filed recorded. This petition is allowed.

Pronounced by me in open court this the 10th day of July 2023.

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.4/2022 in
O.S.No.128/2021
Dated : 10.07.2023
DMC, Sulur