

Bagavathi Ammal Vs. Vimala

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Court : Chennai

Decided On : Jan-07-2013

Judge : G.Rajasuria

Appellant : Bagavathi Ammal

Respondent : Vimala

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

07. 01/2013 CORAM THE HONOURABLE MR.JUSTICE G.RAJASURIA C.R.P.(NPD)(MD)No.37 of 2013 and M.P.(MD)No.1 of 2013 Bagavathi Ammal .. Petitioner Vs Vimala .. Respondent Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 19.07.2011 made in I.A.No.69 of 2011 in O.S.No.178 of 2009 on the file of the Sub-Court, Pudukottai. !For petitioner ... Mr.B.Jameel Arasu ^For respondent ... Mr.P.Ganapathi Subramanian :ORDER Heard both the sides. 2.The learned counsel for the revision petitioner / defendant would echo the heart-burns of his client to the effect that his application under Section 5 of the Limitation Act to get the delay of 146 days condoned in filing the application under Order 9 Rule 13 of CPC to get set aside the ex-parte decree for recovery of money, was dismissed without any valid reason and the delay was small and that occurred due to the communication gap between himself and his Advocate. 3.Whereas, the learned counsel for the respondent would state that he is having no objection in condoning the delay. 4.In view of the fact that the delay was small, I am of the view that the delay could be condoned subject to payment

of a cost of Rs.500/- (Rupees Five Hundred Only) by the revision petitioner to the respondent within a period of one week from the date of receipt of a copy of this order; whereupon, the Lower Court shall number the application under Order 9 Rule 13 of CPC and deal with it as per law. In the event of allowing the application and setting aside the ex-parte decree, the suit itself shall be disposed of within a period of four months thereafter. However, it has been brought to my knowledge that so far the written statement itself was not filed before he was set ex-parte and in such a case, there should have been a separate application also filed seeking permission of the Court to file written statement by the defendant. If such a petition was not earlier filed, the same shall be filed during the pendency of the application under Order 9 Rule 13 of CPC for formally complying with the procedures.

5. The Civil Revision Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs. KM To The Subordinate Judge, Pudukottai.

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