



C.R.P.(MD)No.2069 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.02.2024

PRONOUNCED ON: 22.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2069 of 2019

and

C.M.P.(MD)No.10670 of 2019

K.Chandran(died) : Petitioner/Respondent/Respondent/
Defendant

2.C.Anbuselvi
3.C.Padmanabhan
4.C.Padmapriya : Petitioners
(Petitioners 2 to 4 are brought on
record as LR's of the deceased sole
petitioner vide order dated
21.07.2023 made in C.M.P.(MD)Nos.
7674, 7676 and 7678 of 2023)

Vs.

Kondama Reddi : Respondent/Petitioner/Petitioner/
Plaintiff

PRAYER:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the fair and ex-order dated 09.08.2019, made in I.A.No.453 of 2014 in I.A.No.969 of 2011 in



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O.S.No.836 of 2011, on the file of I Additional Subordinate Judge,
Madurai.

For Petitioners : Mr.K.Pandiarajan

For Respondent : Mr.P.Rajagopalan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.453 of 2014 in I.A.No.969 of 2011 in O.S.No.836 of 2011, dated 09.08.2019, on the file of I Additional Subordinate Court, Madurai allowing the petition filed under Section 5 of the Limitation Act.

2. The respondent as plaintiff has filed the above suit in O.S.No. 836 of 2011, on the file of the I Additional Subordinate Court, Madurai against the revision petitioner / defendant for recovery of Rs.2,01,958/- with interest and costs due on the promissory note, that the original revision petitioner who is the defendant has filed a written statement and was contesting the case. Pending revision, the revision petitioner had died and his legal heirs got themselves impleaded as revision petitioners 2 to 4. When the suit was posted for trial in the list on 11.08.2011, since



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the plaintiff has failed to appear, the suit was dismissed for default on 11.08.2011. The plaintiff has then filed an application under Section 5 of the Limitation Act to condone the delay of 19 days in filing the petition to restore the suit which was dismissed for default on 11.08.2011 and the same was taken on file in I.A.No.969 of 2011 and that since notice of hearing was not given to the other side, the petition in I.A.No.969 of 2011 was ordered to be dismissed for default on 05.11.2012. Thereafter, the plaintiff has filed the above application in I.A.No.453 of 2014 under Section 5 of the Limitation Act to condone the delay of 404 days in filing the application to restore the petition in I.A.No.969 of 2011, which was dismissed for default on 05.11.2012. The revision petitioner/defendant has filed a counter statement raising objections. The learned trial Judge, after enquiry, has passed impugned conditional order, allowing the petition on payment of costs of Rs.2,000/- to the respondent. Aggrieved by the impugned order, the defendant has preferred the present revision.

3. The case of the respondent/plaintiff is that the suit was posted in the list on 11.08.2011 and at that time, the plaintiff was attending to his wife, who was admitted in the hospital, that his earlier Advocate did not inform him about the posting of the case in the list and hence, it was



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dismissed for default, that the plaintiff has then filed two applications, one to restore the suit and the other to condone the delay in filing the restoration application, that his earlier Advocate did not respond him properly and did not inform anything about the stage of the case, that the plaintiff having dissatisfied with lukewarm attitude of the Counsel, cancelled the vakalat through a letter dated 10.08.2013, that the plaintiff after cancelling the vakalat, fell ill and had been bed ridden since the third week of August 2013, that the plaintiff was suffering from jaundice and was taking keelanelli treatment and recovered, that the plaintiff had then contacted the present Counsel, who appeared for his wife in other case pending before the District Munsif of Madurai Taluk, that the said Counsel after perusing the records informed him that the application to condone the delay of 19 days in filing restoration petition was numbered as I.A.No.969 of 2011 and it came up on 05.11.2012 for giving notice of hearing, but the petition was dismissed for default as notice was not given and as there was no representation, that the earlier Counsel on record is duty bound to give notice, but he failed to give the same as it had happened beyond his control, that the plaintiff has then engaged the present Counsel and filed the petitions, that there was no wilful intention to drag on the case, that the plaintiff could not pursue or



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follow the case due to his illness, that the respondent cannot have valid objections for allowing the petition and that the plaintiff will be put to irreparable loss, if the petition is not allowed.

4. The revision petitioner/defendant has filed counter statement raising objections stating that the defendant's wife – Anbuselvi has taken a loan of Rs.1,17,000/- on 23.05.2005 from the plaintiff and for that loan, the defendant and his wife have given a signed and unfilled promissory note and also his wife gave a security for the said loan in favour of one Ramu Reddiyar – close relative of the plaintiff, that the plaintiff's wife has also filed a civil suit against the defendant's wife and the same is pending in O.S.No.192 of 2011, on the file of the District Munsif, Madurai Taluk, that subsequent to the filing of the suit in O.S.No.481 of 2008, the present suit came to be filed by raising false and untenable allegations, that the plaintiff has purposely allowed the suit to be dismissed for default, that he has filed the applications by levelling unnecessary allegations against his earlier Counsel, that the plaintiff has not produced any medical records to show his illness, that the reason assigned for the delay cannot be accepted and that therefore, the petition is liable to be dismissed.



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5. It is not in dispute that the plaintiff has laid the suit for recovery of money due on the promissory note. As already pointed out, since the suit was posted for trial in the list on 11.08.2011 and since the plaintiff has failed to appear, he was called absent and as such, the suit was dismissed for default. It is not in dispute that the plaintiff has then filed an application to restore the suit which was dismissed for default along with an application in I.A.No.969 of 2011 to condone the delay of 19 days in filing the restoration petition and that since notice of hearing in respect of the petition in I.A.No.969 of 2011 was not given to the other side, the said petition was ordered to be dismissed for default on 05.11.2012.

6. The main contention of the plaintiff is that his earlier Counsel did not inform him anything properly and did not inform about the stage of the case. As rightly contended by the learned Counsel for the respondent, for giving notice of hearing to the other side, the appearance of the applicant is not necessary. It is for his Counsel to take steps for giving/sending notice on the other side. The plaintiff in the affidavit filed in support of the above petition has further stated that he was



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suffering from jaundice and was recovered from the illness and that he was taking keelanelli treatment. The learned trial Judge, by observing that the reasons stated by the plaintiff that his earlier Counsel did not respond properly is an acceptable one, that the plaintiff cannot be expected to produce the medical certificate for taking keelanelli treatment and that the reason given by the plaintiff is satisfactory and sufficient cause was shown by the plaintiff, has chosen to allow the petition, by imposing costs.

7. It is settled law that the word sufficient cause in Section 5 of the Limitation Act should receive liberal construction to do substantial justice and the length of delay is not a matter, but acceptability of the explanation is the only criteria. It is also settled law that the delay condonation petition should not be dealt with in a routine manner and mechanical approach in condonation of huge delay cannot be accepted.

8. On considering the entire facts and circumstances, the impugned order allowing the application filed under Section 5 of the Limitation Act to condone the delay in filing the petition for restoring I.A.No.969 of 2011 cannot be found fault with and this Court is in entire agreement



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with the findings of the trial Court. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

22.03.2024

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

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To

1. I Additional Subordinate Court, Madurai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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