

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

C O R A M

THE HONOURABLE **Mr.JUSTICE K.KALYANASUNDARAM**

CRP.NPD.No.1065 of 2015

and

M.P.No.1 of 2015

M.Balan	...	Petitioner
	Vs.	
M.Kumaresan	...	Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the order made in I.A.No.790 of 2014 in O.S.No.676 of 2006 dated 10.12.2014 on the file of Additional District Munsif, Vellore, Vellore District.

For Petitioner : Mr.Udayakumar

ORDER

This civil revision petition arises out of the order dated 10.12.2014 passed by the Additional District Munsif, Vellore, in I.A.No.790 of 2014 in O.S.No.676 of 2006.

2. The petitioner is the defendant in O.S.No.676 of 2006 filed by the respondent for recovery of a sum of Rs.55,725/- based on the Promissory Note dated 20.02.2006.

3. The petitioner received summons in the suit and also entered appearance through an advocate. However, for non-filing of the Written Statement, the petitioner was set exparte and an exparte decree was passed on 18.09.2008. Based on the decree, the plaintiff laid an Execution Petition in E.P.No.17/2014. The petitioner received notice in the execution petition and entered appearance through his advocate on 07.03.2014 and after filing his counter on 06.06.2014, he chose to file this application on 17.06.2014 to condone the delay of 2081 days in filing the application to set aside the exparte decree.

4. In the affidavit filed in support of the petition, the petitioner has alleged that he engaged an advocate to contest the case and also filed his written statement on 20.12.2007 in the office, which is registered as serial No.20193. The petitioner was under the bonafide impression that the suit was pending and only after receiving notice in E.P. No.17/2014, he came to know about the exparte decree passed on 18.09.2008. It is further stated that the delay is neither willful nor wanton but it was beyond his control.

5. The application was opposed by the respondent stating that the enormous delay was not properly explained by the petitioner. The trial Court dismissed the application. Aggrieved by order, the present civil revision petition is filed.

6. Mr.V.Udayakumar, the learned counsel for the petitioner submitted that the petitioner has discharged the entire loan to the respondent, but however, due to negligence of the counsel, he could not contest the case. It is further submitted that due to the mistake committed by the counsel, the petitioner cannot be made to suffer. The learned counsel for the petitioner has relied upon the judgment reported in **1981 AIR 1400 : 1981 SCR (3) 509 (Rafiq and another v. Munshilal and another)**, wherein it has been held as under:-

" It is not proper that an innocent litigant, after doing everything in his power to effectively participate in his proceedings by entrusting his case to the Advocate, should be made to suffer for the inaction, deliberate omission or misdemeanour of his agent. For whatever reason the Advocate might

have absented himself from the Court, the the innocent litigant could not be allowed to suffer injustice for the fault of his advocate. (511 B)

The respondent's costs should be recovered from the Advocate who absented himself from Court . (511 D)

(The court directed the appeal to be restored to its original position in the High Court and heard)."

7. In the case at hand, it is not in dispute that the petitioner received summons in the suit and he has also entered his appearance through an advocate. It is also not in dispute that the petitioner received notice in E.P.No.17/2014 and entered his appearance on 07.03.2014, but he filed this application only on 17.06.2014. In the affidavit filed in support of the petition to condone delay, there is absolutely no explanation for the delay between 07.03.2014 and 17.06.2014.

8. It is useful to refer the unreported judgment of this Court in **C.R.P.(NPD).No.2242 of 2010, (S.Sankarapandian V. S.Prakash Chand)** dated 13.02.2012, wherein, this Court held as follows;

“10. In yet another judgment of this Court reported in 2009 (5) CTC 48 (Shanmugam Vs. Chokkalingam) would also dealt with sufficient cause and the bonafide of parties who are seeking for condonation of delay. The relevant passage has runs as follows:-

“14. Nothing was available in the affidavit towards the reasons for such negligence. Therefore, it could be construed as an inaction coupled with negligence on the part of the petitioner. The attitude of the petitioner in not filing the petition to set aside the exparte decree immediately after the receipt of the notice in the EP would also make that inaction coupled with negligence as willful and that would also go to show that the petitioner has not placed the truth before the Court. Apart from that, he had not explained the delay in taking steps to set

aside the exparte decree from the date of receipt of the notice in the execution proceedings till he files the petition to set aside the exparte decree on 9.6.2007. That would show that the petitioner was no diligent in defending the case. According to the aforesaid judgments of this Court, th inaction even after taking notice from the EP Court would amount to willful negligence on the part of the petitioner. Even if the Court wants to construe the reason assigned by the petitioner liberally in order to given him an opportunity to contest the suit, the laches on the part of the petitioner in not taking steps to file the petition to set aside the exparte decree immediately on knowing the passing of exparte decree against him would render no assistance from the Court. Even though the delay caused in filing the petition to set aside the exparte decree was 332 days, it was not explained by the petitioner with sufficient cause to condone the delay as contemplated in the judgment of out Honourable Apex Court.”

9. In the light of the above facts, I am of the considered view that the judgment relied on by the learned counsel for petitioner viz., 1981 AIR 1400 : 1981 SCR (3) 509 does not have any bearing on the facts of this case and on the other hand, the judgment of this court reported in **C.R.P.(NPD).No.2242 of 2010, (S.Sankarapandian V. S.Prakash Chand)** dated 13.02.2012, is squarely applicable to this case.

10. In my considered opinion, the petitioner has not shown sufficient cause for condoning the inordinate delay of 2081 days. Hence, I do not find any reason to interfere with the impugned order in this civil revision petition.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2015

Index : Yes
Internet : Yes
vrc/sms
To
The Additional District Munsif,
Vellore, Vellore District.

K.KALYANASUNDARAM,J.

vrc/sms

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