

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

Coram:

THE HONOURABLE Mrs.JUSTICE ARUNA JAGADEESAN

**C.R.P.(NPD).No.2707 of 2011
and
M.P.No.1 of 2011**

Krishnamoorthy

.. Petitioner

Vs.

Krishnan Naidu

.. Respondent

Prayer

Civil Revision Petition filed under Article 115 of C.P.C. against the order dated 12.03.2011 in I.A.No.1882 of 2009 in O.S.No.94/2007 on the file of Principal District Munsif Court, Thirukovilur.

For Petitioner : Mr.P.Jagadeesan

For Respondent : Mr.A.R.Nixon

ORDER

This civil revision petition is filed against the order, dated 12.03.2011 passed by the learned Principal District Munsif,

Thirukovilur, in I.A.No.1882 of 2009 in O.S.No.94 of 2007, declining to condone the delay of 817 days in filing the petition to set aside the exparte decree passed against the petitioner/defendant herein.

2. The short facts are that the respondent herein filed a suit for recovery of a sum of Rs.13,970/- together with interest. The defendant/petitioner herein contested the suit by filing the written statement denying the execution of pro-note in favour of the respondent/plaintiff and further raising a plea that he had borrowed a sum of Rs.5,000/- from one Velayutham, who got the signature of the petitioner in blank papers, and that he had discharged the said amount together with interest after three months. It is claimed that the signed blank paper was not returned and the same had been misused and the present suit has been filed by the plaintiff with the help of the said Velayutham.

3. It appears that when the matter was listed for trial, the defendant did not appear and hence, an exparte decree was passed against the defendant on 29.06.2007. The petitioner filed a petition in I.A.No.1882/2009 to condone the delay of 817 days in filing the petition to set aside the exparte decree wherein he had stated that

he had been to Bangalore to eke his livelihood and the letter sent by his Advocate intimating the trial date could not be received by him. Thereafter, when he came to his native village, he had come to know about the exparte decree and immediately, he had filed this petition and the delay has occurred because of the above stated reasons.

4. The learned trial Judge did not accept the reason assigned by the petitioner for condoning the inordinate delay of nearly 2 years and therefore, dismissed the petition as against which, the present revision has been filed.

5. The learned counsel appearing for the petitioner submitted that the petitioner had gone to Bangalore to eke his livelihood and the letter sent by his Advocate did not reach him as he had no permanent address in Bangalore. He further submitted that the petitioner also sustained fracture in his leg in Bangalore and therefore, he could not come to his native place for nearly 2 years. The above said explanation stated by the petitioner, though disputed by the respondent before the trial Court in the counter, however, it was suggested that the delay could be condoned if the

petitioner deposits the decree amount before the Court.

6. On the other hand, Mr.A.R.Nixon, learned counsel appearing for the respondent submitted that no relief could be granted in this revision because the explanation given by the petitioner for the delay was wholly unsatisfactory.

7. I have heard the submissions made on either side and also perused the materials placed on record.

8. It is not disputed that the petitioner had been to Bangalore for earning his livelihood. While considering the plea for condonation of delay raised by a litigant, the Court has to adopt a liberal approach, more-so, when it is said that he had to be away from his place for earning his livelihood.

9. In ***M.K.Prasad vs. P.Arumugam (MANU/SC/0398/2001)***, their Lordships of the Supreme Court reiterated the liberal approach in condonation of delay by recording the following observation.

"In construing Section 5 of the Limitation Act,

the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section.

Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigating him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra-vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties."

10. Bearing in mind, the observation made in the decision cited supra, I am of the view that considering the facts and circumstances, though there is a valid ground for condonation of delay, however, in the interest of justice, the petitioner/judgment debtor can be directed to deposit the entire suit amount before the trial Court.

11. Therefore, the civil revision petition is allowed and the order passed by the learned Principal District Munsif, Thirukovilur, dated 12.03.2011, is set aside, on condition that the petitioner deposits a sum of Rs.14,000/- to the credit of O.S.No.94 of 2007 on the file of Principal District Munsif, Thirukovilur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the learned Principal District Munsif, Thirukovilur, is directed to take the suit on file and dispose of the suit in O.S.No.94 of 2007 within a period of four months from the date of such deposit. It is needless to point out that on failure to deposit the above said amount by the petitioner as directed by this Court within the stipulated time, then the order passed by the learned Principal District Munsif, Thirukovilur, dated 12.03.2011, shall stand restored. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2015

Index:Yes/No
Internet:Yes/No
vsi

To

The Principal District Munsif Court,
Thirukovilur.

ARUNA JAGADEESAN.,J.

Vsi

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