

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2015

CORAM

THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

CRP (NPD) No.1930 of 2003

and C.M.P.No.20303 of 2003

Kiyan @ Palani ... Petitioner/1st Defendant.

vs.

1.R.Susheela Ramasamy

2.Ammayee @ Palani Ammal

... Respondents/Plaintiff &
2nd Defendant.

Civil Revision Petition is filed against the order dated 11.9.2003 made in I.A.No.372 of 2002 in O.S.No.157 of 1999 on the file of the District Munsif Court, Palacode, Dharmapuri District

For Petitioner : Mr.S.M.Subramaniam

For Respondents : Mr.V.R.Annagandhi (R1)

Notice served, No representation (R2)

O R D E R

This Civil Revision Petition is arising out of the order made in I.A.No.372/2002 in O.S.No.157/1999, thereby rejecting the application filed to condone the delay of 175 days in filing the application under Order 9 Rule 13 CPC to set aside the exparte decree dated 19.9.2001.

2.The petitioner/first defendant has in the affidavit filed in support of condone delay application, stated that as he was unwell due to severe stomach pain and knee pain and was bed ridden for 8 months and was under treatment from one nativity doctor, he was unable to meet his counsel and to give instruction for filing the written statement. As a result, he was set exparte and exparte decree was passed on 19.9.2001. It is further stated therein that he came to know about the exparte order only after receiving the notice in REP.No.48/2001. Thereafter, he has come forward with the application for setting aside the exparte decree along with the application for condoning the delay of 175 days in filing the same and unless and otherwise, the delay was condoned, he would be put to irreparable loss and hardship.

3.The condone delay application was seriously opposed by the respondent/plaintiff mainly by denying the theory of illness. According to him, the first defendant purposely failed to appear for the hearings to protract the proceedings.

4.The trial court, after due contest, dismissed the condone delay application on the ground that the petitioner has not duly explained the delay of 175 days and the reason for the same was not supported by any document. Aggrieved by the same, the petitioner/first defendant has come forward with the present Civil Revision Petition.

5.Heard the rival submissions made on both sides.

6.Both the petitioner/first defendant and the respondent/plaintiff would in this civil revision petition reiterate the same contentions as raised before the trial court. The learned counsel for the respondent/ plaintiff has also produced a copy of the order of the learned single Judge T.S.Sivagnanam, J reported in 2014 (3) CTC 715 (N.Prabhu v. C.John Kennady), wherein, the learned brother judge has dismissed the similar petition for want of documentary evidence. In my considered view, each case is to be decided on its own fact, as such, the view of the learned single Judge in the judgment cited above cannot be applicable to the facts of the present case.

7.As far as the present case is concerned, the averments raised in the application would reveal that the petitioner has taken nativity treatment for his illness. Considering the nature of the illness and nature of the treatment taken for the same by the petitioner, there may not be any documentary evidence available in support of the theory of illness propounded by the petitioner. As it is now well settled that while the parties are expected to explain the delay with sufficient cause, this Court is also required to take liberal approach. By applying the same principle herein, this court is of the view that the cause shown by the petitioner is sufficient enough to condone the delay of 175 days and the impugned order rejecting the condone delay application is liable to be set aside.

8.At this juncture, the learned counsel for the respondent/plaintiff would fairly concede that while allowing the condone delay application, this Court may pass appropriate orders for allowing the application filed under Order 9 Rule 13 C.P.C.

9.In view of the same, the impugned order made in I.A.No.372 of 2002 in O.S.No.157 of 1999 by the District Munsif Court, Palacode, Dharmapuri District is set aside and I.A.No.372 of 2002 is ordered, thereby condoning the delay in filing the application to set aside the exparte decree. The trial court is directed to take up the application under Order 9 Rule 13 C.P.C and pass appropriate orders,

thereby setting aside the exparte decree and restore the suit in O.S.No.157 of 1999 on file. The petitioner/first defendant is directed to file written statement within two weeks from the date of restoration of the suit. Thereafter, the trial court shall dispose of the suit on merits as expeditiously as possible, preferably, by the end of August 2015. The parties are directed to cooperate with the trial court for expedite disposal of the suit. In the event of non cooperation of either of the parties, the trial court shall dispose of the case in the manner known to law.

10.This civil revision petition is accordingly ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rk

To

1.The District Munsif Court, Palacode, Dharmapuri District.

2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.V.R.Annagandhi, Advocate SR.No.20344

+1cc to Mr.S.M.Subramaniam, Advocate SR.No.20371

CRP (NPD) No.1930 of 2003

MSM[co]
gp/24.04.2015

WEB COPY