



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/2/2015

C O R A M

WEB COPY

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD(MD) No.2025 of 2014

Mr.K.R.K.Vellaiyan ... Petitioner

Vs

Mr.C.T.S.Chidambaram Chettiar ... Respondent

Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 27/6/2014 in I.A.No.687 of 2012 in O.S.No.50 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Thiruppathur with costs.

For petitioner ... Mr.S.Anand Chandrasekar
For respondent ... Mr.V.R.Shanmuganathan

O R D E R

This Civil Revision Petition is directed against the order refusing to condone the delay of 470 days in setting aside the ex parte decree passed against the revision petitioner.

2. The revision petitioner is the defendant in the suit filed by the plaintiff for recovery of possession.

3. The petitioner herein contended that an application was filed for appointment of a Commissioner in I.A.No.59 of 2009 was dismissed on 26/3/2009. Against which the Civil Revision Petition was preferred before this Court and there was a stay of the further proceedings in the suit. Thereafter, the petitioner's wife fell sick and he had to take care of her and he could not attend to the Court proceedings nor could he met his counsel.

4. While so, when he received the notice in the execution proceedings, he got to learn that the suit was decreed ex parte against him on 11/4/2011. Thereafter, on enquiry, he could know that C.R.P was also dismissed. Immediately, on coming to know about the ex parte decree, he had engaged a Lawyer to set aside the ex parte decree. However, after entrusting the matter to the counsel for setting aside the ex parte decree, the petitioner was affected by jaundice for which he had to take native treatment and after he recovered, he has filed an application to set aside the ex parte decree. However, in the process, there was a delay of 470 days which had to be condoned.

5. The said application to condone the delay was resisted by the plaintiff/respondent herein condoning that there was no bonafide in the averments made by the petitioner. The respondent also denied the averment that the petitioner's wife was sick and thereafter, the petitioner himself was suffering from jaundice. According to the



respondent, the petitioner had not explained each days delay for condoning the delay of 470 days. Hence prayed for dismissal.

6. The learned District Munsif-cum-Judicial Magistrate, Thirupathur, who tried an application dismissed the delay petition on the ground that the petitioner had not given an acceptable explanation for the delay. Aggrieved by the same, the above revision is filed.

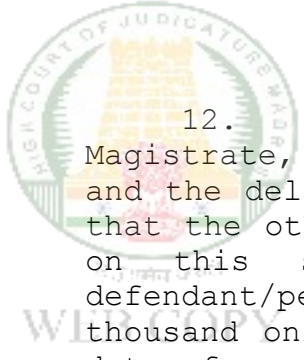
7. Heard the learned counsel for the petitioner and the respondent.

8. The only question that has to be decided is whether the delay of 470 days in setting aside the ex parte decree can be allowed or not.

9. Though the petitioner has given the reason as the sickness of the wife first and thereafter, his own sickness namely Jaundice, to support his case, he has also marked Exs.P.1 and P.2 which are the medical prescriptions for the treatment given to his wife.

10. The learned counsel appearing for the respondent contended that even after the petitioner's wife was discharged from the hospital, there was sufficient time for the petitioner to file an application to set aside the ex parte decree. Whether there is sufficient cause shown by the petitioner to condone the delay? Sufficient cause is elastic enough to enable the Court to apply the law in a meaningful manner which subserves the ends of justice. Of course, there is no hard and fast rule can be laid down in dealing with the condonation of delay. But the Supreme Court has justifiably advocated adoption of a liberal approach in condoning the delay of short periods. Whether it is the length of the delay or the acceptable explanation that is given by the party is the question. In each case, the Court has to examine by its own facts. The true guide would be whether the petitioner acted with due diligence in prosecuting the suit. Even if the delay is short, if the Court finds the reasons are unacceptable, then it may not be condoned. Therefore, sufficient cause is purely an individualistic task. In the present case, the delay is more than one year. It is not that the petitioner has not adduced any evidence. Besides examining himself he has also marked the documents wherein his wife was taking medical treatment. No doubt, thereafter, he has not produced any evidence to show that he was suffering with Jandice and he was taking native treatment. This is the reason for which the trial Court had dismissed the application stating that at least the person who treated with native medicine could have been examined by the petitioner. No doubt, it is axiomatic that the condonation of delay is the discretion of the Court. The petitioner has given sufficient cause for his absence from the Court and it is not the case of the respondent that the petitioner is a chronic defaulter or he had been deliberately procrastinating the suit.

11. As stated earlier, the Court has to be liberal in considering the facts of each case and allow the suit to be tried on merits. Admittedly, this is the first time the defendant had to let the suit go ex parte. In such circumstances, this Court feels one more opportunity may be given to the defendant to contest the suit on merits.



12. Accordingly, the order of the District Munsif-cum-Judicial Magistrate, Thirupathur, dismissing the delay of 470 days is set aside and the delay is condoned. However, this Court is conscious of the fact that the other side should be compensated for the time and energy wasted on this score. Therefore, in the interest of Justice, the defendant/petitioner is directed to pay a sum of Rs.3,000/- (Rupees Three thousand only) to the respondent within a period of four weeks from the date of receipt of the copy of this order.

13. With the above observation and direction, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed. The learned District Munsif-cum-Judicial Magistrate, Thiruppathur is directed to dispose of the suit as expeditiously as possible however not later than 31st July, 2015. The parties are also directed to cooperate for the speedy disposal of the suit.

Sd/-

Assistant Registrar(Writ)

/True copy/

sub Assistant Registrar

mvs.

To

1.The District Munsif-cum-Judicial Magistrate, Thiruppathur

2.Do thro' The District Judge, Sivagangai.

+1cc to M/S.SARVABHAUMAN ASSOCIATES, SR NO.6219

+1cc to MR.V.R.SHANMUGANATHAN, ADVOCATE IN SR NO.6599

C.R.P.PD (MD) No.2025 of 2014
11/2/2015

rg.19.02.2015 3p.5c.