



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09/02/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD(MD) No.2293 of 2014

and

MP(MD)No.1 of 2014

WEB COPY

C. Sankar ... Petitioner/Defendant
Vs
Gnanam ... Respondent/Plaintiff

Petition filed under Section 115 of the Code of Civil Procedure against the order dated 18/9/2014 in I.A.No.170 of 2014 in O.S.No.218 of 2012 on the file of the District Munsif-cum-Judicial Magistrate, Bhoothapandy.

For petitioner ... Mr.G.Ramanathan
For respondent ... Mr.A.R.Kannappan

O R D E R

The application under Section 5 of the Limitation Act to condone the delay of 263 days in filing the petition to set aside the ex parte decree was dismissed and the said order is challenged in the present revision petition.

2. The defendant, who has filed the application has contended that the ex parte decree was passed on 11/7/2013. He could not attend the Court on the said date as he was suffering from spinal cord problem. Hence sought for a condonation of delay.

3. The said application was resisted by the plaintiff contending that there was no just and sufficient reason explaining each day's delay furnished by the defendant. The plaintiff also disputed the fact that the defendant was sick on the date of decree and denied the medical certificate filed by him in support of his case.

4. The trial Judge had dismissed the application as no valid reason given for the delay by the defendant.

5. On the perusal of the order passed by the learned District Munsif, Bhoothapandy, it is seen that even on 21/2/2013, the defendant had filed Vakalat after service of summons. The defendant ought to have filed the written statement on or before 30th April, 2013. However, the Court had extended time to enable him to file the written statement, but the defendant had not filed the written statement. After he was set ex parte, he has filed a medical certificate in proof of his ailment in the spinal cord. The said medical certificate shows that the defendant alleged to have been hospitalised only between 11/7/2013 and 25/7/2014.



6. From the records, it can be seen that even on 18/6/2013, he was set ex parte. Thereafter, ex parte decree was passed on 11/7/2013 and there was no valid and acceptable reason put forth by the defendant for the condonation of delay. Though the Apex Court has time and again reiterated that the Courts have to be lenient in condoning the delay, unless sufficient cause is shown, a liberal approach cannot be exercised. Discretion to condone the delay is not necessarily based on the length of the delay but on the sufficient and satisfactory explanation. Even if the delay is short, the explanation offered is unacceptable, the delay cannot be condoned.

7. Even though the defendant had stated his ailment as a reason, he has not filed any medical records to substantiate the same nor has he examined the Doctor, who has issued the certificate. In the counter affidavit filed in support of the petition, the plaintiff has stated that the defendant had been periodically visiting his father's house which is opposite to the plaintiff's house. When the plaintiff has established that the absence of the defendant from the Court is only deliberate on the date of setting him ex parte and thereafter, also, the defendant had been negligent in approaching the Court within the prescribed time. The respondent having filed Vakalat through the counsel had the knowledge of the ex parte decree. Therefore, ought to have approached the Court within the time prescribed. Even if there is a delay, unless the delay is explained with acceptable reason, the same need not be condoned. It is axiomatic that the condonation of delay is the discretion of the Court and the trial Court who has seen the demeanour of the parties has dismissed the delay petition. Hence this Court is satisfied that the petitioner/defendant has not given any acceptable explanation for his absence and the order of the lower Court does not suffer from any infirmity and the same is confirmed.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(C.O.,)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate, Bhoothapandy.

+1cc to Mr.G.Ramanathan, Advocate, in SR. No.5750.

+1cc to Mr.A.R.Kannappan, Advocate, in SR. No.5744.