



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2015

CORAM:

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

CRP (MD) .No.144 of 2013

Ramaiah : Petitioner/Defendant

Vs.

A. Natarajan
rep. by its Power Agent
Selvaraj : Respondents/Plaintiff

Prayer: This Civil Revision Petition is filed under Section 115 of C.P.C against the fair and decreetal order in I.A.No.479 of 2012 in O.S.No.43 of 2010 dated 05.10.2012 on the file of the Sub Court, Pudukkottai.

For Petitioner : Mr. M. Ramu
For Respondent : Mr. M. Palanisamy

O R D E R

This Revision is filed against the dismissal order passed in I.A.NO.479 of 2012 filed under Section 5 of the Limitation Act, by the defendant who suffered ex parte decree. The defendant has filed an affidavit in which he admits that he received the summons from the suit in O.S.No.43 of 2011. The suit is filed in the year 2011 and he was set ex parte on 24.09.2011.

2. It is contended by the revision petitioner that there was a talk of settlement with the plaintiff who was living outside India. The power of attorney who was representing on behalf of the plaintiff represented that after the plaintiff had come back to India, the settlement could be finalised. The defendant claimed that he engaged a counsel and every time he enquired about the case, he had given him an answer that the suit was pending. However, only at a later date, the defendant came to know that the suit was decreed. Thereafter, immediately he had taken steps to file an application to set aside the ex parte decree. However, a delay of 329 days had crept in.

3. This petition was opposed by the plaintiff / respondent herein contending that each delay has not been explained and denied the allegations made by the petitioner herein regarding the settlement.

4. The learned Subordinate Judge who heard the matter disposed the same holding that the petitioner had not given a specific date, on which he had engaged a counsel, when he got the knowledge about the ex parte decree and When he had approached the counsel etc., Hence, the application was dismissed by the trial Court. Aggrieved by the same this revision has been filed.



5. No doubt, sufficient cause has to be shown in any matter that has been filed with the delay. But, however, time and again and it is repeated by the Hon'ble Supreme Court and this Court that a liberal approach should be taken in such matter, subject to the condition that defaulter must give an acceptable explanation for the delay.

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6. In this case, it is a suit for specific performance which itself is an equitable relief. It is stated that within a period of two months from the date of filing of the suit, the suit has been decreed ex parte. As substantial justice is paramount technical objections should not be given much importance. No doubt, the defendant has also stated that there was a talk for settlement.

7. No doubt, gross negligence has to be taken note of. In this case the ex parte decree has been passed within a period of two months from the date of filing of the suit. The reason given by the defendant is also convincing and acceptable. It is axiomatic that the condonation of the delay is discretion of the Court. As the delay is 366 days and the reasons stated by the revision petitioner is acceptable the delay can be condoned.

8. In view of the above findings, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.479 of 2012 in O.S.No.43 of 2010 dated 05.10.2012 on the file of the Sub Court, Pudukkottai. No costs.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

The Sub Court, Pudukkottai.

+1cc to Mr.M.Palanisamy, Advocate in SR.No.10059

+1cc to Mr.M.Ramu, Advocate in SR.No. 9969

sm:09.04.2015:2P/4C

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