

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4543 of 2014

C.M.P.No.12608 of 2016

S.K.Duraisami

... Petitioner

..VS...

C.Saravanakumar

..Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decreetal order dated 24.07.2014 passed in I.A.No.111 of 2013 in O.S.No.71 of 2011 on the file of the Sub Judge, Sathyamangalam.

For Petitioner : Mr.K.N.Nataraj
For Respondent : Mr.S.Parthasarathy

ORDER

Challenging the fair and final order dated 24.07.2014 passed in I.A.No.111 of 2013 in O.S.No.71 of 2011 on the file of the Subordinate Judge, Sathyamangalam, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.712 of 2011 for recovery of money. Since the defendant failed to appear before the trial Court, he was set exparte and an exparte decree was passed on 24.01.2012. Thereafter, the defendant filed an application in I.A.No.111 of 2013 to condone the delay of 351 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the application, the defendant has stated that he was suffering from Jaundice and therefore he could not appear before the trial Court and file an application to set aside the exparte decree in time. The plaintiff filed his counter disputing the averments stated in the application.

3. Admittedly, the defendant was working as a driver in the Tamil Nadu State Transport Corporation, Sathyamangalam. The plaintiff produced Ex.R.2 Attendance Register of the defendant issued by the Tamil Nadu State Transport Corporation, Sathyamangalam. On a perusal of Ex.R.2, the trial Court has come to the conclusion that he was attending to the regular duty without availing any leave. Further, the trial Court has observed that the defendant has taken only one or two days casual leave during the relevant period. When the defendant was attending to his duty regularly without availing leave, the averments stated in the affidavit filed in support of the application that he was

suffering from Jaundice and he could not appear before the trial Court was disbelieved by the trial Court. Further, the exparte decree was passed on 24.01.2012, pursuant to which, the plaintiff filed an Execution Petition in E.P.No.34 of 2012 and the defendant also appeared personally before the Executing Court on 08.08.2012 and filed the vakalath. However, the present application to condone the delay of 351 days in filing the application to set aside the exparte decree was filed only on 11.02.2013. Ex.R1, the certified copy of the petition and order in E.P.No.34 of 2012 would clearly establish that the defendant had appeared before the Executing Court on 08.08.2012. When the defendant was attending to his official duty without availing any leave, the reason for not filing the application to set aside the exparte decree cannot be accepted. However, the trial Court, having come to the conclusion that the defendant has not explained the reasons for the delay in a proper manner, in order to give a final opportunity, has condoned the delay, on payment of cost. When the findings of the trial Court are against the defendant for condonation of the delay, the trial Court should not have condoned the same. The ratio laid down by this Court in the Judgment in the case of **Natarajan vs. Manu Pillai** reported in 2012(1) MWN (Civil) 564 squarely applies to the facts and circumstances of the present case. The discretion of the Court was wrongly exercised in favour of the defendant in the case on hand.

M. DURAISWAMY,J.,
rg

4. In these circumstances, the fair and decreetal order passed by the trial Court are liable to be set aside and accordingly the same are set aside. The Civil Revision Petition is allowed. No costs.

17.10.2016

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Note: Issue on 18.10.2016

To

The Sub Judge, Sathyamangalam

C.R.P.(NPD)No.4543 of 2014