

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.3157 of 2016

and

C.M.P.No.15997 of 2016

1.Pokkilai

W/o.Ashok Kumar

.. 1st Defendant/1st Petitioner

2.Ashok Kumar

S/o.Palani

.. 2nd Defendant/2nd Petitioner

-Vs.-

M/s.Sivasakthivel Chits & Finance

Corporation

Rep by its Managing Partner

Shri R.Perumal

Kamaraj Nagar, Ariyankuppam

Pondicherry - 605 007.

.. Respondent/Plaintiff/Respondent

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the order dated 21.06.2013 passed in I.A.No.573 of 2012 in O.S.No.111 of 2009 on the file of the Principal Subordinate Judge, Puducherry.

For Petitioners : Mr.P.Veeraraghavan

For Respondent : Mr.T.Dhanyakumar

ORDER

The present Civil Revision Petition has been filed challenging the impugned order dated 21.06.2013 made in I.A.No.573 of 2012 in O.S.No.111 of 2009 on the file of the learned Principal Subordinate Judge, Puducherry, wherein the application filed under Section 5 of the Limitation Act to condone the delay of 920 days in filing the petition to set aside the exparte decree came to be dismissed.

2.The respondent herein as plaintiff has filed the suit against two defendants in O.S.No.111 of 2009 to direct the defendants to pay the suit claim amount of Rs.3,78,720/- along with accrued interest at two percent per month on the principal amount of Rs.2,70,000/- from the date of the suit till realization. The said suit was decreed exparte on 01.02.2010. While so, the petitioner herein, who is the second defendant in the suit has filed an application in I.A.No.573 of 2012 to condone the delay of 920 days in filing the petition to set aside the exparte decree. After contest, the said application came to be dismissed on 21.06.2013, as against which the present Civil Revision Petition has been preferred.

3.The learned counsel appearing for the revision petitioner would

submit that the revision petitioner is the second defendant and his wife is the first defendant in the suit. Since there was a matrimonial dispute between the spouses, even though the first defendant received the summons, she did not intimate the same to the revision petitioner/second defendant. Hence, the revision petitioner/second defendant did not contest the suit and because of his non-appearance the suit was decreed exparte. While so, on receipt of the notice in the E.P proceedings, he has filed the application to set aside the exparte decree along with a petition under Section 5 of the Limitation Act to condone the delay of 920 days. However, the Trial Court without considering the said factum had dismissed the application preferred by the revision petitioner. Hence, the learned counsel prayed for allowing the Civil Revision Petition.

4. On the other hand, the learned counsel appearing for the respondent would submit that the respondent/plaintiff had filed the certified copy of the summons which shows that the revision petitioner had refused to receive and obstructed to affix the court summons. Hence, the Trial Court considering the service to be sufficient had set the revision petitioner exparte and passed an exparte decree. Thereafter, on receipt of notice in the E.P proceedings, the revision petitioner had come forward with the application to set aside the exparte decree which shows the malafide intention of the revision petitioner

to drag on the proceedings. Further, he has not given sufficient cause for the delay which was rightly considered by the Trial Court while dismissing the application preferred by the revision petitioner. Thus, the learned counsel prayed for dismissal of the revision.

5.Considering the rival submissions made by both sides and on perusal of the typed set of papers, it is seen that the respondent herein as plaintiff had filed the suit in O.S.No.111 of 2009 for recovery of money due on a promissory note. Though the first defendant received the lawyer notice and also the Court summons, neither she sent a reply nor filed a written statement and contested the suit. On the other hand, the notice sent to the revision petitioner/second defendant was returned as refused. On the basis, he was set exparte and an exparte decree was passed on 01.02.2010. While so, only on receipt of the notice in the E.P. Proceedings he has preferred an application in I.A.No.573 of 2012 to condone the delay of 920 days in filing the petition to set aside the exparte decree. The reason stated in the affidavit filed in support of the said application is that since there was a matrimonial dispute prevailing in the family, his wife did not intimate about the suit. However, to substantiate the same, he has not filed any document or let in any evidence which would show his malafide intention to drag on the proceedings.

6.As per the dictum of the Hon'ble Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, it was specifically held that length of delay is immaterial, but the acceptability of the explanation is the only criterion. It is appropriate to incorporate para-9 of the said decision:

"9.It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion

of the lower Court."

7. At this juncture, it would also be appropriate to consider the dictum laid down in **2011 (4) SCC 363 (Lanka Venkateswarlu (Dead), rep. by legal heirs) Vs. State of Andhra Pradesh and others**), wherein it was held that while considering the applications for condonation of delay under [Section 5](#) of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason.

8. Considering the facts of the present case in the light of the above decisions, I am of the view that there is no sufficient reason to condone the delay. Hence, I do not find any reason to interfere with the fair and decreetal order dated 21.06.2013 passed in I.A.No.573 of 2012 in O.S.No.111 of 2009 on the file of the Principal Subordinate Judge, Puducherry.

9. In fine, the Civil Revision Petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No costs.

20.12.2016

pgp

R.MALA, J.

pgp

C.R.P.(NPD).No.3157 of 2016

Dated : 20.12.2016

<http://www.judis.nic.in>