

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2341 of 2012
and
M.P.No.1 of 2012**

Chidhamparam

.. Petitioner

Vs.

Ponnusamy

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order and decretal order passed on 27.11.2009 in I.A.No.828 of 2007 in O.S.No.1485 of 2004, on the file of the learned Principal District Munsif at Namakkal.

For Petitioner : Mr.S.Balasubramanian

For Respondent : Mr.T.Dhanyakumar

ORDER

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The case of the revision petitioner is that the respondent herein as plaintiff has filed the above suit in O.S.No.1485 of 2004 for Recovery of money for realization of an amount said to have borrowed by the revision petitioner by executing the subject promissory note.

The Revision petitioner on receipt of notice in the above suit appeared through an advocate to defend him. Trial commenced and the thumb impression was obtained by the court and was sent for expert opinion. In the mean time in the month of June 2006 the revision petitioner suffered severe jaundice and was bed ridden, therefore he was not in a position to attend the court proceedings or contact his counsel. Whereby the trial court on 01.08.2006 has set the revision petitioner ex-parte and thereby has passed an ex-parte decree. The said ex-parte decree came to petitioner's knowledge on receipt of notice in execution petition initiated by the respondent.

2.Hence the revision petitioner was not in a position to file an application to set aside the ex-parte decree within the prescribed period. Thereupon the petitioner filed a petition under Section 5 of Limitation Act to condone the delay of 168 days in filing the application to set aside the ex-parte decree. Whereas, the trial court erred in dismissing the revision petitioner's Interlocutory application by order dated 27.11.2009. The said order is impugned herein.

3.I heard Mr.S.Balasubramanian, learned counsel appearing for the petitioner and Mr.T.Dhanyakumar, learned counsel appearing for

the respondent and perused the entire records.

4.The learned counsel for the revision petitioner contends that the failure on the part of the revision petitioner to appear on the said date of hearing is neither willful nor wanton, but the same was due to severe jaundice and other medical ailments.

5.Per contra, the learned counsel for the respondent would contend that the reason put forth by the revision petitioner is untrue and baseless. The revision petitioner has purposely absented himself, so as to protract the suit endless.

6.On perusal of the typed set of papers it is seen that the reason stated by the revision petitioner is severe jaundice and his old age. It is further noticed that the revision petitioner's application was rejected by the Learned Trial Judge that the reasons assigned by the revision petitioner is not satisfactory. The case records further disclose that there is also a civil suit in O.S.No.7 of 2015 pending relating to the suit property, which is proposed to be attached by the Respondent for realization of Decree amount based on the Subject Promissory Note.

7. In such circumstance, this Court is of the opinion that the Decree on hand is an Ex- parte one and at this juncture this Court likes to emphasis some of the decisions of the Hon'ble Apex Court and this Court wherein it was held as follows:

i) 2007(4) TLNJ 565 (Civil) in the matter of Ramakrishnan Vs

The AEEO, Tiruvarur&Ors wherein it was held that " The term every day's delay should be explained, should not be viewed in pedantic way and the approach of the court must be in common pragmatic manner.

ii) 2000-1 L.W.547, In the matter of Amudha

Vs S.A. Arumugham&Ors, wherein it was held that condonation of delay is a matter of discretion of the court and section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within certain time.

Iii) AIR 1969 SC 575 in the matter of *State of West Bengal Vs*

Administrator, Howrah Municipality, Sakuntala Devi Jain -

Vs- Kuntal Kumari wherein to ensure substantial justice,

the Hon'ble Apex Court had condoned the delay caused in

filing an application, by holding that the rules of limitation

are not meant to destroy the rights of the parties.

8. Furthermore at the same time, the respondent should be compensated for the hardship faced by him. In this regard it is useful to refer the following Judgments of our High Court in 2014 (2) CTC 649 in Nagarathinammal and others v. Madhammal wherein it is held that

“Through the other averments that the petitioners were misled by the assurance made by the Respondent / Plaintiff to withdraw the case and that the 4th Revision Petitioner had gone to outstations for the treatment of his ailing mother could be construed to be averments not substantiated and insufficient for condoning the delay, the other reason, namely the suspension of the Advocate by the Bar Council of Tamil Nadu, which was not known to the Revision Petitioners previously, can be held to be a valid reason for seeking an order condoning delay in filing the Application to set aside the ex-parte Preliminary Decree. This Court is of the considered view that, when such is the contention of the Revision petitioner and such is the reason assigned by them, the interest of Justice requires passing of an Order giving the Revision Petitioners one more opportunity to contest the case and get a contested verdict

and at the same time, direct the Revision Petitioners to compensate the Respondent/ Plaintiff by a cost of Rs.10,000/-".

9.In 2016 (5) CTC 117 in *Sarasu v. Ravi* wherein it is held that:

"When a Court of Law deals with an Application to condone the delay filed under Section 5 of the Limitation Act, such Application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an Application to condone the delay as per Section 5 of the Limitation Act, belatedly, no party will file the same with a mala fide intention. If a party files a Delay Condonation Application belatedly, he or she runs a serious risk.

However, if an Application filed under Section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of justice will be certainly defeated. In a Condonation of Delay

Application filed under Section 5 of the limitation Act, 1963, the length and breadth of the delay is not a material/ relevant factor”.

10. In view of the above dictum laid down by this Court and for the foregoing factual matrix, this court by setting aside the impugned order deems fit to provide the revision petitioner with one more opportunity to get decided the case on hand on merits, after proper appraisal of the oral and documentary evidence let in by either parties.

11. In the result:

- a) this Civil Revision Petition is allowed by setting aside the order of the Principal District Munsif Court, Namakkal, dated 27.11.2009 made in I.A.No.828 of 2007 in O.S.No.1485 of 2004, on a condition that the petitioner shall pay a sum of Rs.3,000/- to the respondent herein within a period of two weeks from the date of receipt of copy of this order copy.
- b) the Principal District Munsif Court, Namakkal, is hereby directed to number the set aside application filed under Order 9 Rule 13 of CPC and dispose the same within a period of 15 days from the date of receipt of copy of this Order, by giving

notice to both parties.

c) on passing the order in the Set Aside application, the Principal District Munsif Court, Namakkal is hereby directed to dispose of the suit within a period of one month, on day to day basis without giving any adjournments to either parties. Both the parties are hereby directed to cooperate with the earlier disposal of the suit. Consequently, connected miscellaneous petition is closed.

22.12.2016

Note: Issue order copy on 17.11.2017

Index: Yes

Internet: Yes

vs

To

The Principal District Munsif,
Namakkal.



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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.2341 of 2012
and
M.P.No.1 of 2012**

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