

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated: 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.318 of 2012
and
M.P.No.1 of 2012**

K.Senniappan

.. Petitioner

Vs.

Jagadeshwari

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 14.12.2011 made in I.A.No.882 of 2011 in O.S.No.9 of 2008, on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.V.Anandha Moorthy

For Respondent : Mr.K.Govi Ganesan

ORDER

The petitioner has filed this Civil Revision Petition to set aside order dated 14.12.2011 made in I.A.No.882 of 2011 in O.S.No.9 of 2008 on the file of the District Munsif Court, Avinashi.

2.The revision petitioner's case is that the respondent herein has filed the money suit as against the revision petitioner and his family members in O.S.No.9 of 2008 before the District Munsif Court, Avinashi on the basis of an alleged pronote said to have been executed by the revision petitioner's father namely Kittusamy. The 1st and 2nd defendants are mother and son respectively. It is the claim of the revision petitioner that no such pro-note was executed by his father. In the meantime the revision petitioner fell ill and was under treatment for some time at Kerala.

3.Being so, the revision petitioner on receipt of Court notice in the execution petition in E.P.No.3 of 2011 came to know that due to his non-appearance on 27.07.2010 before the trial Court, he was set ex-parte and the suit was decreed on 31.08.2010 as ex-parte. The revision petitioner's non-appearance before the trial Court was neither

willful nor wanton, but was because of his illness out of jaundice and underwent Siddha treatment for a period of 1 year at Kerala. Whereupon the revision petitioner filed an application to set aside the ex-parte decree passed against him. However, since there was a delay of 241 days in filing the set aside application, an Interlocutory application under Section 5 of Limitation Act, in I.A.No.882 of 2011 was filed praying to condone the delay of 241 days. Whereas, the Learned trial Judge without proper appreciation of fact that the revision petitioner's absence was neither willful nor wanton and the delay caused is liable to be condoned, but erroneously has dismissed the same. The said order of dismissal is impugned in the present C.R.P.

4.I heard Mr.V.Anandha Moorthy, learned counsel appearing for the revision petitioner and Mr.K.Govi Ganesan, learned counsel appearing for the respondent and perused the entire records.

5.The learned counsel for the revision petitioner would submit that the absence of the revision petitioner before the trial Court was because of a circumstance of being affected by Jaundice which is beyond his control. The said absence is neither Willful nor Wanton. The

revision petitioner is not a chronic defaulter and his non-appearance was because of his treatment undergone at Kerala.

6.The said reason are bonafide, genuine and the delay caused in filing the application to set aside the ex-parte decree is liable to be condoned and the application ought to have liberally considered. Whereas the Learned trial Judge in a mechanical approach has dismissed the revision petitioner's application, regardless of the fact that the subject pro-note is said to have been executed by revision petitioner's father, who was no more at the time of filing the above money suit. The above pro-note was not executed by the revision petitioner's father, since their family was financially sound and there was no necessity to borrow any loan. But the Learned trial Judge without considering the fact that decree on hand is an ex-parte one, order attaching immoveable properties of the revision petitioner's family, on the above factual ground ought to have condoned the delay in the interest of justice.

WEB COPY

7.Per contra, the learned counsel for the respondent would submit that the reason put forth by the revision petitioner is untrue and the same is liable to be rejected. The revision petitioner having

purposefully remained ex-parte before the trial Court, now at execution stage has come up with the above application with false and lame reasons. It is settled legal proposition that the revision petitioner is duty bound to establish and prove each and every day delay caused in filing the application to set aside the decree passed against him.

8. Admittedly the suit is being filed by the respondent/plaintiff on the basis of a pro-note said to have been executed by the revision petitioner's father, who then at the time of filing the suit was dead. Therefore, the suit is found to be filed as against the legal heirs of the revision petitioner's father. Therefore this Court is of the firm view that the case on hand is a fit case deserving a contested decree on merits. It is needless to say that it is prime and paramount duty of the Court to render just and substantial justice.

i) At this Juncture it would be relevant to look into the decision of our Hon'ble Apex Court in the matter of **Sree Rajendra Mill Ltd., Gandhi Nagar, Leigh Bazaar, Salem v. IOCEE Exports Ltd., 4-E, Century Plaza, No.560-562, Mount Road, Chennai**, holding that the expression "sufficient cause" under Section 5 of the Limitation Act to receive liberal construction so as to

advance substantial justice”.

ii. Further as per the dictum laid down in **1998 (7) SCC 123 (N.Balakrishnan Vs Krishnamoorthy)**, in which, it is held as follows:

"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 whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut 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."

iii) **(2008) 8 SCC 321 (Perumon Bhagavathy Devaswom Perinadu Village Vs Bhargavi Amma (Dead) rep by Lrs. and others)** in which, it is held as follows:

(i) "The words" sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant.

9. In the light of the above said legal proposition and the facts involved in the case on hand, this Court is of the considered opinion

that the delay of 241 days is liable to be condoned on payment of cost of Rs.3,000/- to be paid by the revision petitioner to the Legal Aid.

10.In the result, this Civil Revision Petition is allowed, by setting aside the order passed in I.A.No.882 of 2011 in O.S.No.9 of 2008, dated 14.12.2011, on the file of the learned District Munsif Court, Avinashi, on condition that the revision petitioner shall pay a sum of Rs.3,000/- to the Tamilnadu State Legal Services Authority, High Court Campus, Madras-104, within a period of two weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

19.08.2016

Note:Issue order copy on 13.09.2017

Internet:Yes

Index:Yes

vs

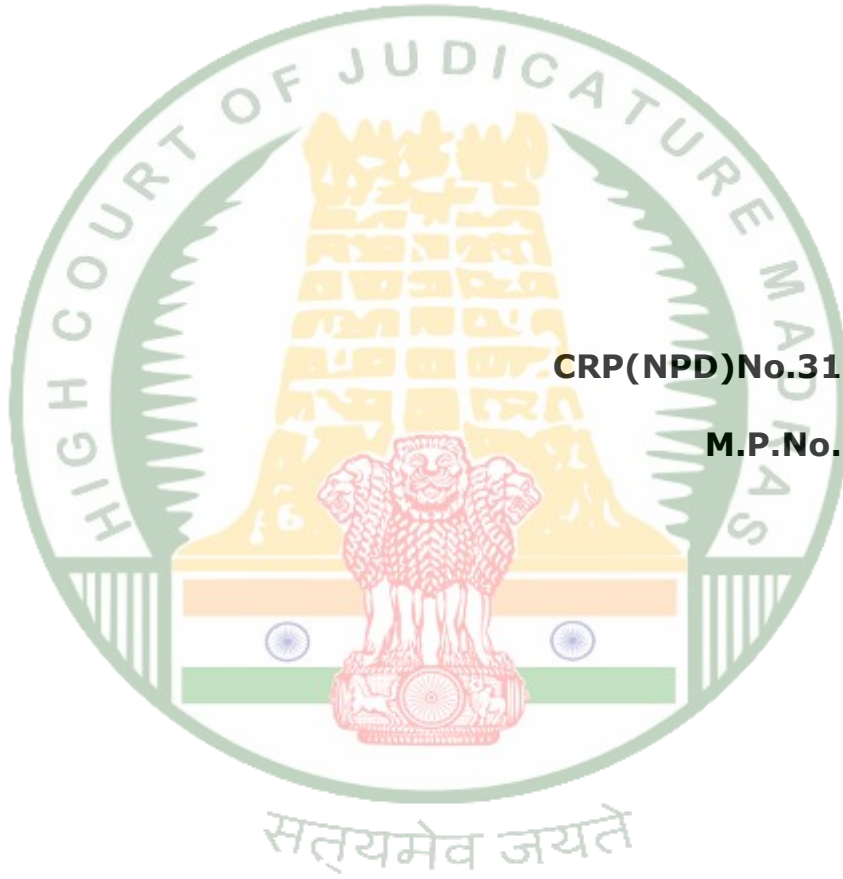
To

The District Munsif Court, Avinashi.

WEB COPY

M.V.MURALIDARAN, J.

VS



**CRP(NPD)No.318 of 2012
and
M.P.No.1 of 2012**

WEB COPY 19.08.2016