

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **N. AUTHINATHAN**

C.R.P.(NPD)No.94 of 2010

and

M.P.No.1 of 2010

R. Kalki

... Petitioner

vs

The Central Bank of India,
rep by its Branch Manager,
Palappampatti Branch,
Udumalpet Taluk

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and final order passed in I.A.No.265 of 2009 in O.S.No.395 of 2000 on the file of Subordinate Court, Udumalpet dated 23.11.2009.

For Petitioner : Mr.S. Arjun for
Ms.P. Indumathi

For respondent : MrK. Sivasubramanian

ORDER

The revision petitioner is the defendant in O.S.No.395 of 2000 on the file of Subordinate Court, Udumalpet. It is a suit for recovery of a sum of Rs.5,78,827/-. The suit was decreed ex-parte on 31.07.2002. The petitioner filed a petition to set aside the ex-parte decree with a delay of 2263 days. He has filed an application in I.A No.265 of 2009 to condone the delay of 2263 days under Sec.5 of the Limitation Act.

2. In the affidavit, filed in support of the petition, the petitioner has stated that in June 2002, he was afflicted with paralysis and was undergoing treatment for the said ailment in a village in Kerala state. The petitioner has also stated that after receipt of notice in the execution proceedings, he came to know that his counsel had expired. When he contacted the Office of the Advocate, he was informed that his case records were not available in his office. Immediately, he engaged another counsel and only thereafter, he came to know that an ex-parte decreer was passed on 31.07.2002.

3. The Decree Holder contested the application, by filing a counter. He denied the averments made in the affidavit, filed in

support of the petition. The respondent/plaintiff contended that the petitioner, during his tenure as the Manager of the plaintiff Bank, had misappropriated the funds of the bank to the tune of Rs.3,84,627.63. The suit has been filed to recover that amount with interest. The present petition has been filed only to delay the execution proceeding.

4. The trial Court recorded the evidence of the petitioner in the application for condonation of delay. After detail consideration of the evidence, the trial Court has disbelieved the case of the petitioner/defendant. The trial court pointed out that the evidence on record would show that the petitioner/defendant had appeared before the Criminal Court in connection with a criminal case pending against him till 2006. However, he had not appeared in the civil case in which exparte decree has been passed and as such, his plea could not be accepted. The trial court refused to condone the delay and dismissed the petition. Aggrieved by the above said order, the defendant has filed the present civil revision petition.

5. The learned counsel for the petitioner would submit that at the time of enquiry, the petitioner was aged about 62 years and he

was afflicted with paralysis in June 2006 and was undergoing treatment in Kerala State. He would further submit that the petitioner's evidence remained uncontraverted and that therefore, the Court below ought not to have dismissed the petition.

6. The learned counsel for the respondent/plaintiff bank would submit that there was inordinate delay of 2263 days and the delay cannot be condoned on the basis of the bald statement of the petitioner/defendant. He relied on the judgment in **Shanmugam vs Chokkalingam (2009(5) CTC 48)** to submit that the delay cannot be condoned as there was negligence on the part of the petitioner in handling the case. According to him, petitioner is guilty of laches and negligence.

7. The suit has been filed for the recovery of the alleged misappropriated funds of the plaintiff bank. It is not in dispute that the petitioner was the former Manager of the bank. It must be pointed out that except the Ipse-Dixit of the petitioner, no acceptable material has been placed before the Court in support of his plea that he was afflicted with paralysis and was taking treatment in Kerala State. As

pointed out by the trial Court, in its order that the petitioner had appeared before the Criminal Court till 2006, but he has not chosen to appear in the suit.

8. The trial Court has also pointed out that the petitioner entered appearance in the year 2005 in the execution proceedings taken in pursuance of the ex parte decree in E.P.No.180 of 2005. However, the petition to condone the delay has been filed only in the year 2009. In the affidavit, filed in support of the petition, the petitioner did not specify the date on which he came to know of the ex-parte decree. The petitioner is not an illiterate. He was former Manager of the plaintiff bank. Therefore, it can be safely held that there was negligence on the part of the petitioner/defendant in defending the suit. There is inordinate delay of 2263 days. He has not tried to minimise the delay even after receipt of notice in the execution proceedings in the year 2005.

9. In the course of argument, the petitioner has come forward to deposit the decretal amount without prejudice to his defence, but, such an offer by itself would not be a ground to condone

such a huge and unexplained delay.

10. On an overall consideration of the facts and record, this Court is of the view that the petitioner/defendant has not shown sufficient cause for condoning the delay. This Court does not find any error in the order of the Court below, rejecting the application for condonation of delay. The Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected MP is closed.

24-11-2016

sr

Index:yes/no
website:yes/no

To

The Subordinate Court, Udumalpet

N. AUTHINATHAN,J.,

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