

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CMP.No.9129 of 2017 in
CRP.NPD.No.SR74840 of 2016

P.Marimuthu

..Petitioner

Vs.

S.Kanagaraj

..Respondent

PRAYER:

Civil Miscellaneous Petition is filed under Section 5 Limitation Act r/w 151 of Civil Procedure Code to condone the delay of 1115 days in filing the revision petition in CRP.SR.No.74840 of 2016 to set aside the order dated 04.04.2013 made in I.A.No.6 of 2013 in O.S.No.445 of 2009 on the file of the I Additional Subordinate Judge, Coimbatore.

For petitioner

: Mr.A.Swaminathan

ORDER

According to the petitioner, the respondent herein filed a civil suit in O.S.No.445 of 2009 before the I Additional Sub Court,

Coimbatore against the petitioner for recovery of sum of Rs.1,14,133/- with sum of Rs.80,000/- at 24% interest for preliminary decree. The Court below passed ex parte decree on 10.06.2010. Pursuant to the ex parte decree, the petitioner filed an application in I.A.No.6 of 2013 in the above suit to set aside the ex parte decree along with a petition to condone the delay of 878 days in filing the above petition. After considering the submissions of the both parties, the application in I.A.No.6 of 2013 has been dismissed by the Trial Court. Hence, the Petitioner has filed this Civil Miscellaneous Petition to condone the delay of 1115 days in preferring a Civil Revision Petition before this Court.

2. According to the learned counsel for the petitioner, the petitioner had been taking treatment for jaundice in Kerala at the time of passing of ex parte order in the above suit and hence, the petitioner was not able to meet the advocate. Further, the petitioner came to know about the ex parte order only after receipt of the final decree petition in the above suit. Thereafter, the petitioner filed an application I.A.No.6 of 2013 in the above suit to set aside the ex parte decree along with a petition to condone the delay of 878 days in filing the above petition. But, the court below has erroneously dismissed the application without considering the

reasons stated in the affidavit. After the dismissal of the above application also, as the petitioner was affected by Viral Hepatitis and went a long distance away for natural medicine, the petitioner could not able to prefer a Civil Revision Petition within the limitation period. With no other alternative, the petitioner has preferred this Civil Miscellaneous Petition to condone the delay of 1115 days in filing the Civil Revision Petition before this Court.

3. On perusal of the records, it is seen that the petitioner had not placed any oral or documentary evidences before the court below to substantiate the reasons stated in the aforesaid application to condone the delay of 878 days in filing a petition to set aside the ex parte order passed in O.S.No.445 of 2009. Therefore, the court below also has rightly rejected the petitioner's reasons for condoning the delay. After the said order was passed on 04.04.2013, the petitioner kept over the matter for nearly more than three years and has now filed this application before this Court with an inordinate delay of 1115 days. Even in the present affidavit, the petitioner has stated that the petitioner was suffered from jaundice, but perusal of records would show that petitioner has not placed any medical certificates for the period from April 2013 to May 2017 to substantiate the same. Originally, the suit

filed by the respondent for recovery of money from the petitioner was decreed in the year 2010. After passing of the ex parte decree, the petitioner should have been vigilant and approached the Court within reasonable time to show his bonafide. Hence, the inordinate delay in filing the petition, without sufficient reasons, is liable to be rejected.

4. In the light of the decision of the Hon'ble Supreme Court in the case of **H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER**, reported in **(2015) 1 SCC 680**, wherein it is held as follows.

" 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance

based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

5. In view of the decision cited supra and the facts of the case, the condone delay application is dismissed and accordingly, the Civil Revision Petition is closed at the SR stage itself. No costs.

29.06.2017

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking
lok

WEB COPY

D. KRISHNAKUMAR.J

lok

To
The I Additional Sub Court,
Coimbatore



CMP.No.9129 of 2017 in
CRP.NPD.No.SR74840 of 2016

WEB COPY

29.06.2017