

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) Nos.2665 and 2666 of 2007

and

M.P.No.1 of 2007

Sampoornam .. Petitioner in both the CRPs

vs

K.Mahalingam .. Respondent in both the CRPs

Civil Revision Petitions filed under Article 227 of Constitution of India against the order dated 20.01.2007 and 26.02.2007 passed in I.A.No.384 of 2005 in O.S.No.83 of 2003 on the file of the Principal Sub-Court, Gopichettipalayam.

(In both the CRPs)

For Petitioner : Ms.R.Meenal

For Respondent : No Appearance

COMMON ORDER

These Civil Revision Petitions are directed against the order dated 20.01.2007 and 26.02.2007 respectively passed in I.A.No.384 of 2005 in O.S.No.83 of 2003 on the file of the learned Sub-Court, Gobichettipalayam, allowing the petition filed by the respondent under

Section 5 of the Limitation Act to condone the delay of 615 days in filing petition to set aside the ex parte decree.

2. The petitioner is the plaintiff and the respondent is the defendant in the suit. The petitioner filed the suit for recovery of a sum of Rs.1,26,825/- from the respondent. The said suit came to be decreed ex parte on 5.9.2003.

3. The respondent herein filed I.A.No.384 of 2005 under Section 5 of the Limitation Act seeking to condone the delay of 615 days in filing petition to set aside the ex parte decree dated 5.9.2003 alleging that he was not served with any summon in the suit and he came to know the filing of the suit when the petitioner effected paper publication in the execution proceedings. Immediately, he engaged a counsel and instructed to get papers from the Court and made ready the petition to set aside the ex parte decree. Since the respondent was suffering jaundice and had taken country treatment, he could not met his counsel and a delay of 615 days occurred in filing petition to set aside the ex parte decree. The delay is neither wilful, nor wanton. Hence, prayed for condonation of delay of 615 days in filing petition to set aside the ex parte decree.

4. Resisting the petition, the petitioner filed counter stating that he had issued pre-suit notice to the respondent and the same was served on the respondent and he had also replied the said notice. The suit summon as well as notice in the execution proceedings were sent on the address where the pre-suit notice was issued. Despite knowing the factum of filing of the suit, the respondent had wantonly evaded to receive the suit summon. If really, the respondent had no knowledge, he ought to have filed petition to set aside the ex parte decree within 30 days from the date of knowledge, however, in the case on hand, the respondent filed petition to condone the delay of 615 days, from which it is clear that he had knowledge about the suit and the decree passed thereon well before. It is stated that each and every day delay has not been properly explained. The alleged suffering of jaundice by the respondent is invented for the purpose of filing petition. Hence, prayed for dismissal of the petition.

5. The trial Court, condoned the delay on payment of cost of Rs.1,500/- payable by the petitioner to the respondent on or before 5.2.2007, failing which the petition shall stand dismissed and the petition was directed to be listed on 6.2.2007. It appears that on

26.2.2007, the trial Court recorded that cost paid and petition allowed. Aggrieved by the order of the trial Court allowing the petition on payment of cost and also recording the statement that cost has been paid and the petition allowed, the respondent has filed these revisions.

6. Assailing the order of the trial Court, the learned counsel for the petitioner contended that the respondent filed the petition only to drag on the execution proceedings and the trial Court overlooked the fact that the respondent had filed vakalat in the execution proceedings in the month of March and that the respondent filed petition only in June. He would submit that the trial Court failed to see that the respondent accepted the fact that he had knowledge about the suit summons and private notices and that he only returned them as father's name differs. In any event, the learned counsel submitted that the trial Court ought to have dismissed the petition as sufficient cause was not shown to explain the inordinate delay of 615 days.

7. Despite service, the respondent has not entered appearance in these revisions.

8. The point that arises for consideration is whether the trial

Court was right in allowing the petition seeking to condone the delay of 615 days in filing petition under Order 9, Rule 13 of C.P.C.

9. In the case on hand, ex parte decree was passed in the suit on 05.09.2003 and the respondent had filed the petition to set aside the ex parte decree on 06.06.2005. According to the respondent, he came to know the suit filed by the petitioner only through the paper publication effected in the execution proceedings and immediately, he had engaged an advocate and instructed him to prepare petition to set aside the ex parte decree and also advised him to appear in the execution proceedings. Since, he was suffering jaundice, the respondent could not meet his counsel and after recovery, he had filed the petition to set aside the ex parte decree along with delay condonation petition. The same was reiterated by the respondent in his deposition.

10. The main grievance of the respondent is that since father name was incorrectly mentioned in the suit summon, he had not received the summon.

11. The trial Court, allowed the petition mainly on the ground

that the respondent had shown sufficient cause for the delay and therefore, in the interest of justice, it would be appropriate to allow the petition on payment of costs. The said finding arrived at by the trial Court appears to be sustainable.

12. The trial Court is concerned with whether the petitioner has shown sufficient cause for the delay in filing petition to set aside the ex parte decree.

13. In *State of Haryana v. Chandra Mani and others*, reported in 1996(II) CTC 109, the Hon'ble Supreme Court held thus:

"11. The expression "sufficient cause" should therefore, be considered with pragmatism in injustice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the causelaid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. it must be held that the delay of 109 days in this case has been explained and that it is

a fit case for condonation of the delay.”

14. Under Section 5 of the Limitation Act, it is only sufficiency of the cause that matters and not the length and breadth of the delay. While dealing with the Section 5 application, the question of diligence or bona fides are to be considered.

15. It is settled law that 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.

16. Generally delay in filing petition to set aside the ex parte decree is required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of *bona fide* is imputable to the party seeking condonation of delay. In the case on hand, the petitioner had failed to prove that only with a view to drag on the proceedings and/or to prevent him from realising the decree amount, the respondent had filed the petition. After satisfying the reason for delay given by the respondent, the trial Court condoned the delay.

17. When the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, if the Court is satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered. There is no quarrel over the same. However, considering the fact that the petitioner had filed execution petition to realise the decree amount and also the amount involved in the suit, the trial Court ought to have directed the respondent to deposit a portion of the amount mentioned in the execution petition.

18. Considering the facts and circumstances of the case and also in the interest of justice, it would be appropriate to direct the respondent herein to deposit 50% of the amount mentioned in the execution petition, enabling the trial Court to condone the delay of 615 days in filing petition to set aside the ex parte decree.

19. In the result, these Civil Revision Petitions are dismissed, however, I.A.No.384 of 2005 filed by the respondent will be allowed on

condition that the respondent shall deposit 50% of the amount mentioned in the execution petition before the trial Court within a period of four weeks from the date of receipt of a copy of this order, failing which, I.A.No.384 of 2005 shall stand dismissed automatically and the Executing Court shall proceed with the Execution Petition in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2017

Note: Issue order copy on 26.02.2019

vs

Index : Yes

To

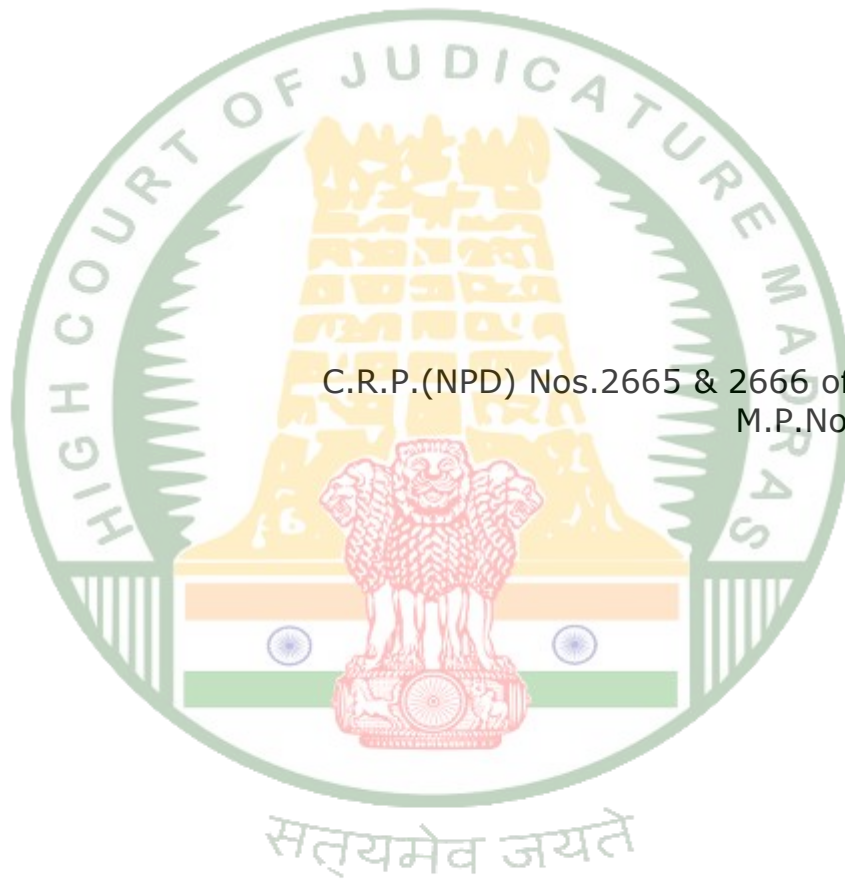
The Principal Sub Court,
Gobichettipalayam.



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M.V.MURALIDARAN, J.

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