

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)No.3046 of 2017
and CMP.No.14299 of 2017

Jayachandran

... Petitioner

Vs

N.Manickam

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 07.07.2017 in I.A.No.373 of 2016 in O.S.No.233 of 2013 on the file of I Additional District Judge, Erode.

For Petitioner : Mr. N.Elumalai

For 1st Respondent : Mr.Myilsamy

ORDER

This civil revision petition is filed to set aside the fair and decreetal order dated 07.07.2017 passed in I.A.No.373 of 2016 in O.S.No.233 of 2013 on the file of I Additional District Judge, Erode.

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2. The respondent herein has filed the suit in O.S.No.233 of 2013 before the I Additional Judge, Erode seeking recovery of money. In the above said suit, P.Ws.1 to 4 were examined and Exs.A1 to A56 were marked on the side of

the plaintiff and plaintiff's side evidence was also completed on various hearings. On all the hearings, the petitioner was present, but the defendant nor his counsel was present on the said hearings. The defendant was set exparte on 05.01.2015 and thereby, an exparte decree was passed on 07.01.2015. Subsequently, the petitioner has filed the application in I.A.No.373 of 2016 in O.S.No.233 of 2013 to condone the delay of 564 days in filing an application to set aside the exparte decree, without considering the contention of the petitioner, the Court below dismissed the said application. Therefore, the petitioner has filed the present civil revision petition before this Court.

3. The case of the petitioner is that the respondent herein has filed the suit for recovery of money for a sum of Rs.1,04,88,527/-. At the time of cross examination of the petitioner, the petitioner was suffered from illness taking treatment at Kerala and he is not able to contact his counsel and he came to know that the petitioner was set exparte and consequently exparte decree was passed. Immediately, thereafter he filed an application to set aside the exparte decree along with condonation of delay.

4. In view of the relief prayed for by the respondent and claiming huge amount from the petitioner, sufficient opportunity has to be granted to the

petitioner to agitated the matter on merits. Therefore, the order passed by the Court below is liable to be set aside.

5. Per contra, the learned counsel appearing for the respondent would submit that the petitioner has not produced any documents before the Court below to substantiate his claim, the petitioner is already suffering in the present litigation for the past five years, due to attitude of the petitioner, with an intention to drag on the proceedings in the aforesaid suit. Therefore, this civil revision petition is liable to be dismissed.

6. Heard the rival submissions made by the counsel for both sides and perused the materials available on record.

7. On perusal of the affidavit filed by the petitioner, the petitioner submitted that he had undergone treatment at Kerala for illness. Therefore, the petitioner was unable to appear before the trial Court on 05.01.2015. After his recovery from illness, the petitioner could contact his counsel, thereafter, the petitioner has filed the application to condone the delay of 564 days to set aside the exparte decree. By considering the nature of the relief sought for in the suit, praying for recovery of money for a sum of Rs.1,04,88,527/- by the respondent. This Court is of the view that sufficient

opportunity has to be granted to the petitioner to agitate the matter on merits. At the same time, the petitioner filed the instant application to condone inordinate delay without furnishing any evidence, to substantiate his reasons stated in the affidavit for condoning the delay in the aforesaid application.

8. The respondent filed the suit in year 2013 and the same is pending for more than four years. By considering the aforesaid fact and balance of convenience of both the parties, this Court feels to afford an opportunity to the revision petitioner to agitate his claim in the suit on merits before the Court below, on imposing heavy cost on the revision petitioner.

9. In the light of the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649***, has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay. Hence, this Court feels that the application for condoning the delay of 564 days in filing the set aside ex parte decree petition can be allowed, by imposing heavy cost on the petitioner/defendant.

10. In the light of the above facts and the decision of the Hon'ble Apex Court, this Court is inclined to pass the following order:

i) The impugned order passed in I.A.No.373 of 2016 in O.S.No.233 of 2013 on the file of the I Additional District Court, Erode, is hereby set aside. On condition that the petitioner shall pay a sum of Rs.30,000/- to the respondent and further sum of Rs.10,000/- to the Tamil Mediation and Conciliation Centre, High Court, Madras, within a period of four weeks from the date of receipt of a copy of this order. In default, this revision petition shall stand dismissed without any further reference to this Court.

ii) In the event of the conditional order has complied with, the Court below is directed to pass appropriate orders in application filed under Order 9 Rule 13 of C.P.C. within a period of four weeks thereafter:

iii) Taking into consideration, the suit has been filed in the year 2013. On instructions, both the parties undertakes that they will cooperate for speedy disposal of the suit before the trial court. The trial Court is further directed to dispose of the suit within a period of six months thereafter.

D.KRISHNAKUMAR,J.

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11. On the above said terms, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Post on 22.01.2018 for reporting compliance.

20.12.2017

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order

Note : Issue Order Copy on 22.12.2017

To

I Additional District Judge,
Erode.

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