

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2667 of 2011
and
M.P.No.1 of 2011**

S.Salomon Sundarraaj

.. Petitioner

Vs.

P.S.Nirmala Sowrajah

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Fair and Decreetal order dated 23.01.2009 passed in I.A.No.553 of 2008 in I.A.No.153 of 2007 in O.S.No.65 of 2006 passed by the Subordinate Judge, Poonamallee, Thiruvallur District, praying to set aside the same.

For Petitioner : Mr.P.Rathanavel

For Respondent : Mr.P.B.Balaji

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order dated 23.01.2009 passed in I.A.No.553 of

2008 in I.A.No.153 of 2007 in O.S.No.65 of 2006 passed by Subordinate Judge, Poonamallee, Thiruvallur by allowing the same.

2.It is the case of the revision petitioner that the respondent herein filed a suit against him in O.S.No.65 of 2006 on the file of the Subordinate Court, Poonamallee for recovery of money. The said suit was resisted by the revision petitioner by filing written statement. Thereafter due to the non appearance of the revision petitioner and his counsel, an ex-parte decree was passed on 22.01.2007. The respondent herein filed execution petition in E.P.No.10 of 2008 to realize the decree amount. Thereafter the revision petitioner filed an application in I.A.No.153 of 2007 to condone the delay of 12 days in seeking to set aside the ex-parte decree. The respondent herein filed a counter affidavit and strongly opposed the condone delay application. Thereafter, the revision petitioner allowed the application in I.A.No.153 of 2007 to be dismissed for default on 05.12.2007. To restore the dismissal of I.A.No.153 of 2007, the revision petitioner filed I.A.No.553 of 2008 with a delay of 187 days. The said application was resisted by the respondent herein by saying that the revision petitioner already filed an application in I.A.No.153 of 2007 and the same was already dismissed and therefore the present application is not maintainable.

After enquiry the learned trial judge has ultimately dismissed the application by order dated 23.01.09. Aggrieved over the same, the revision petitioner has come up with this revision petition.

3.I have Mr.Rathnavel, learned counsel appearing for the petitioner and Mr.P.B.Balaji, learned counsel appearing for the respondent and perused the entire records.

4.In this case it is seen from the records that an ex-parte decree was passed against the revision petitioner on 22.01.2007. Subsequently the respondent herein filed E.P.No.10 of 2008 to realize the decree amount. Thereafter revision petitioner filed I.A.No.153 of 2007 to condone the delay of 12 days in setting aside the ex-parte decree. The respondent herein filed counter affidavit to the said I.A. on 05.11.2007. The revision petitioner allowed I.A.No.153 of 2007 for dismissal and the same was dismissed for default on 05.12.2007. Thereafter the revision petitioner filed I.A.No.553 of 2008 to condone the delay of 187 days in seeking to set aside the dismissal order made in I.A.No.153 of 2007.

5.The trial Court has considered the application in I.A.No.553 of

2008 and found that the conduct of the revision petitioner is not good and he has deliberately delaying the disposal of the suit. Therefore the learned trial judge has ultimately dismissed the application.

6.Now the point for consideration before this Court is whether the dismissal of I.A.No.553 of 2008 is called for interference or not?

7.It is true that an ex-parte money decree was passed against the revision petitioner on 22.01.2007 itself. Thereafter the plaintiff/respondent filed E.P.No.10 of 2008 also to realize the decree amount. In the mean time the revision petitioner filed an application in I.A.No.153 of 2007 to condone the delay of 12 day in seeking to set aside the ex-parte decree. The reason assigned therein is that the petitioner counsel was engaged in Fast Track Court No.3 at Poonamallee. Hence he could not attend the Court. Thereafter the said application was dismissed for default by order dated 05.12.2007. In order to set aside the dismissal order made in I.A.No.153 of 2007, the revision petitioner filed I.A.No.553 of 2008 with delay of 187 days. The reason assigned in the I.A.No.553 of 2008 is that the petitioner was held up at Madhuranthagam for doing job as he was doing welding contract labour work.

8. Whereas the respondent herein disputed the said fact and stated that the revision petitioner earlier filed application to condone the delay of 12 days in seeking to set aside the ex-parte decree and the same was dismissed for default. Thereafter the revision petitioner filed the present application to restore the said I.A. and his intension is only to delay the disposal of the suit and execution proceedings in one way or other.

9. In this context this Court accepts the contention made by the learned counsel for the revision petitioner, that it is an ex-parte decree for recovery of money and no one shall be suffered with an ex-parte decree. The right of the parties shall not be curtailed and they should be given one more opportunity to put forth their case to get a decree after full-fledged trial. At the same time for the unnecessary delay caused by the defendant, he should compensate the plaintiff by paying cost to the plaintiffs which would meet the ends of Justice.

10. At this juncture it is useful to refer the following Judgments dealing with the issue of condone delay application:

In **2016 (5) CTC 117** in **Sarasu v. Ravi** wherein it is held that

“When a Court of Law deals with an Application to condone the delay filed under Section 5 of the Limitation Act, such Application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an Application to condone the delay as per Section 5 of the Limitation Act, belatedly, no party will file the same with a mala fide intention. If a party files a Delay Condonation Application belatedly, he or she runs a serious risk.

However, if an Application filed under Section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of justice will be certainly defeated. In a Condonation of Delay Application filed under Section 5 of the limitation Act, 1963, the length and breadth of the delay is not a material/ relevant factor”.

i) 2007(4) TLNJ 565 (Civil) in the matter of Ramakrishnan

Vs The AEEO, Tiruvarur & Ors wherein it was held that "The term every day's delay should be explained, should not be viewed in pedantic way and the approach of the Court must be in common pragmatic manner.

- ii) **2000-1 L.W.547, In the matter of Amudha Vs S.A.Arumugham & Ors**, wherein it was held that condonation of delay is a matter of discretion of the Court and section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within certain time. The Court has to take into consideration that interests of justice require that the delay must be condoned.

11. In this case the delay is 187 days only. But the said application was filed to restore the original condone delay application seeking to set aside the ex-parte decree. In view of the settled legal propositions, I am of the considered opinion, in the interest of justice and to meet the ends of justice the delay can be condoned on payment of cost of Rs.5,000/- to be paid by the petitioner herein/ defendant directly to the respondent / plaintiff. For the foregoing reasons, the order and decree passed by the trial Court is liable to be set aside.

12.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order in I.A.No.553 of 2008 in I.A.No.153 of 2007 in O.S.No.65 of 2006, dated 23.01.2009, on the file of the Subordinate Judge, Poonamallee, Thiruvallur District, on condition that the revision petitioner to pay a sum of Rs.5,000/- to the respondent herein as cost, within a period of two weeks from the date of receipt of copy of this order;

(b) the trial Court is further directed to take up I.A.No.153 of 2007 in O.S.No.65 of 2006, and to pass orders within a period of one month from the date of payment of the cost, by giving notice to both the parties and pass appropriate order. Consequently, connected miscellaneous petition is closed.

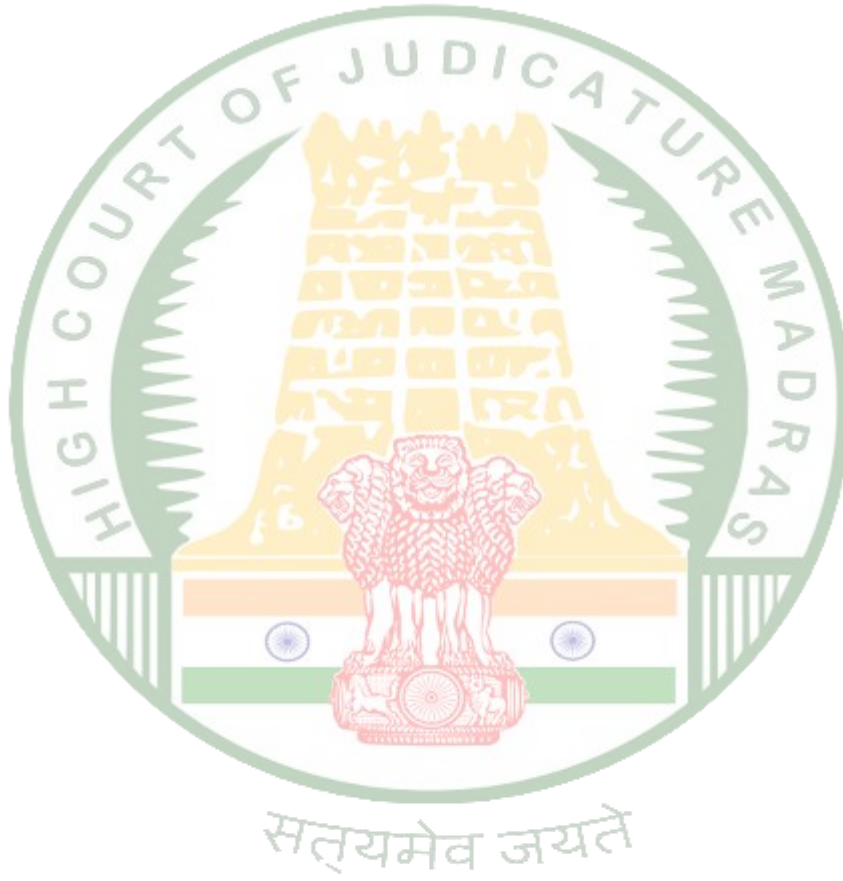
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Internet:Yes
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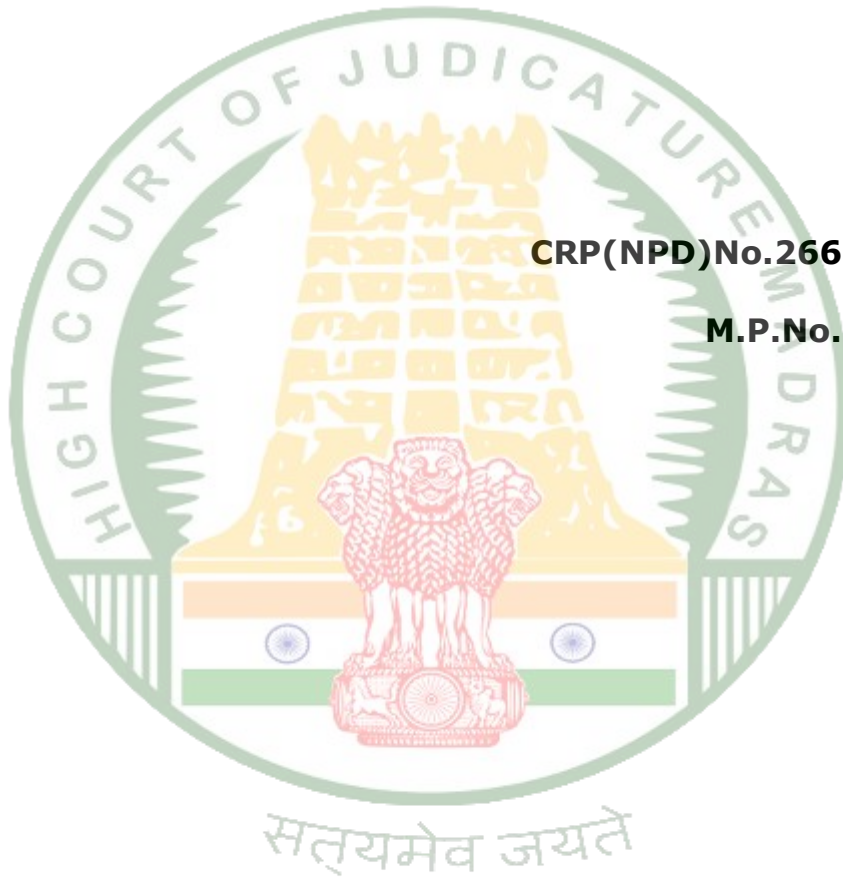
The Subordinate Judge,
Poonamallee, Thiruvallur District.



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M.V.MURALIDARAN, J.

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