

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.343 of 2017

And

C.M.P.No.22233 of 2017

1.Abdul Rahman

2.Mrs.Shakeela Rahaman ... Appellants/Applicants/
Defendants

Vs.

Mrs.Jayabharthi ...Respondent/Respondent/
Plaintiff

Prayer:

Appeal filed under Order 36 Rule (1) of OS Rules read with Clause 15 of the Letters Patent praying to set aside the order dated 29.09.2016 passed in Application No.3901 of 2016 in A.No.6431 of 2013 in C.S.No.26 of 2007.

Prayer in A.No.3901 of 2016: Application praying this Court to set aside the order of the Honourable Master dated 20.12.2013 made in A.NO.6431 of 2013 in CS.No.26 of 2007

Prayer in A.No.6431 of 2013: Application praying this Court to condone the delay of 1796 days in representing the above application bearing Sr.NO.25730 of 2007.

Prayer in C.S.No.26 of 2007: Civil Suit filed under order IV Rule I of O.S.Rules read with order XXXVII of the code of Civil procedure 1908, praying this court to pan a decree and Judgment against the defendants/respondent herein:-

(i) directing the defendants to pay to the plaintiffs a sum of Rs.33,88,000/- together with interest at the rate of 24% per annum for the principal amount of Rs.20,00,000/- from the date of plaint till the date of realisation;

(ii) directing the defendants to pay the plaintiffs the costs of the suit and;

(iii) granting such other and further relief:

For Appellants : Mr.M.Ragavendran
For Respondent : Mr.S.Raghavan

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1.This is an appeal, preferred by the original defendants, in C.S.No.26 of 2007. In the appeal, challenge is laid, to the judgment and decree, dated 29.09.2016, passed by the learned Single Judge, in Application No.3901 of 2016.

1.1.This application was filed, by the appellants herein/ the defendants, to seek condonation of delay of 1796 days, in representing the Application No.SR25730 of 2007.

1.2.To be noted, Application No.SR25730 of 2007 was filed by the appellants / defendants, to seek condonation of delay of 18 days, in filing the leave to defend application, which, in turn, is adverted to in the impugned order as SR12672 of 2007.

2.Briefly, the impugned order has been passed, in the background of the following facts: The respondent herein, who is the original plaintiff, had filed the aforementioned suit for recovery of a sum of Rs.33,88,000/-.

2.1.The suit was pivoted on a promissory note, dated 23.03.2003. The principal sum, according to the respondent/ plaintiff, which was payable by the appellants, was a sum of Rs.20,00,000/-.

3.The appellants/ defendants, filed an application for leave to defend, albeit, after a delay of 18 days.

3.1.It is, in these circumstances, as indicated above, the application for condonation of delay was filed. This application is still un-numbered and has been issued the Diary No.SR25730 of 2007.

3.2.While this application was pending, the learned Master decreed the suit (which is, a summary suit preferred under Order 37 of the C.P.C.), on 23.12.2008.

3.3.It appears, that thereafter Execution Proceedings were taken out by the respondent/ plaintiff and, vide order dated 30.07.2012, the Executing Court ordered arrest of appellant no.1/ defendant no.1.

3.4.Given these circumstances, the appellants/ defendants attention got focussed, on getting the exparte decree set aside, which was passed, as indicated above, in the suit. Accordingly,

an application was moved, to seek condonation of delay, in filing the application, to set aside the exparte decree.

3.5.The record shows, that the Court, vide, order dated 17.06.2013, condoned the delay, in filing the application, to set aside the exparte decree, subject to deposit of Rs.10,00,000/-, to the credit of the suit by the appellants/defendants.

3.6.The appellants/ defendants, complied with this condition, whereupon, the exparte decree passed, qua, them, was set aside, on 29.11.2013.

3.7.These events, led to the appellants procrastinating in processing the application for condonation of delay in seeking leave to defend. The application seeking condonation of delay in leave to defend, had been returned, in the interregnum to the appellants/ defendants and therefore, it was required to be represented, for it to be adjudicated upon.

3.8.The appellants/ defendants finally moved an application, i.e., A.No.6431 of 2013, to seek, as adverted to above, condonation of delay in representing application diarried as SR25730 of 2007. The period of delay, by this time, as indicated at the outset, mounted to 1796 days.

3.9.The learned Master, however, dismissed this application, vide, order dated 20.12.2013.

4.It is, in these circumstances, that an application was moved, before the learned Single Judge, i.e., A.No.3901 of 2016, to set aside the order passed by the learned Master, dated 20.12.2013.

5.The learned Single Judge, however, came to the conclusion, that delay ought not to be condoned, interalia, for the reason, that there was no explanation, for the period of delay between the time when the application for seeking condonation of delay of 18 days in filing, in turn the application to seek leave to defend was returned, and, the time suit was decreed, albeit, exparte. In other words, according to the learned Single Judge, the appellants/ defendants, had failed to give a reasonable explanation, for the period between 21.05.2008 and 23.12.2008.

6.Being aggrieved, by the decision of the learned Single Judge, the instant appeal, has been preferred, before us.

7.We may indicate, that even in the filing of the appeal, there was a delay, which has been condoned by us.

7.1.The condonation of delay, though, was ordered by us, on the condition, that the appellants/ defendants, would deposit, a

further sum of Rs.10,00,000/-, to the credit of the suit, this sum was in addition to the equivalent sum of Rs.10,00,000/- deposited by the appellants/ defendants when the exparte decree was set aside.

7.2. That condition was complied, by the appellants/ defendants.

7.3. As a matter of fact, based on an application, moved on behalf of the respondent/ plaintiff, i.e., C.M.P.No.19244 of 2017 on 14.12.2017, we have, directed release of a sum of Rs.20,00,000/-, in favour of the respondent/ plaintiff, for the reasons given therein, subject to, a security being offered by the respondent/ plaintiff, in the form of a encumbrance free immovable property.

8. The aforementioned facts, do indicate, without doubt, that at every stage, the appellants/ defendants have been guilty of not prosecuting their remedy in time. What started as a short period of delay of 18 days in preferring an application, to seek leave to defend, ballooned at the representation stage, to 1796 days.

9. The fact, however, is also, that the appellants/ defendants, have today, secured the interest of the respondent/ plaintiff, to the extent of the principal amount.

9.1. The question, before us, is, as to whether, we should, having regard to the seriousness shown by the appellants/ defendants, in wanting to defend its position, in the suit, be given a chance.

10. In our view, notwithstanding the huge delay in representation, the appellants/ defendants, should be given, an opportunity, as, perhaps, once the exparte decree was passed against them, their focus, shifted in getting the decree set aside, in the first instance.

10.1. The learned Single Judge, as indicated above, has emphasised the fact that there was no explanation, for the period between 21.05.2008 and 23.12.2008.

10.2. As indicated above, this, was the period, which fell between the date when, the appellants/ defendants' application for seeking condonation of delay of 18 days, in filing, in turn, the application for leave to defend was returned and, the date, when the exparte decree was passed.

11. According to us, at that point in time, the significance of leave to defend, for the appellants/ defendants diminished, in view of the fact that a decree, already passed against them.

Unless the exparte decree, was set aside, no purpose would have been served, in pursuing the application for condonation of delay.

12.Thus, having regard to the overall circumstances, we are inclined to allow the appeal, and condone the delay in representing.

13.Mr.Raghavan, who appears on behalf of the respondent/ plaintiff, says, that given the fact that the principal sum of Rs.20,00,000/-, has been deposited by the appellants/ defendants, does, show, for whatever it is worth, that they are now serious, in contesting the proceedings.

14.Therefore, as alluded to above, the impugned order is set aside. The delay is condoned.

14.1.We are told, that the application for condonation of delay, of 18 days (there), in filing the application for leave to defend, i.e., SR25730 of 2007, is, pending adjudication, before the learned Master.

14.2.The learned Master, will, now adjudicate upon the application, and pass appropriate orders, in accordance with law.

15.Mr.Raghavan says, that he does not intend, to oppose the said application, though, formal orders will have to be passed, by the learned Master.

15.1.The learned Master, will, take this into account, and, accordingly pass orders in the said application.

16.The appeal is, disposed of in the aforementioned terms. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition shall stand closed.

सत्यमेव जयते

WEB COPY
Sd/-
Assistant Registrar(CS-IV)
//True Copy//

Sub Assistant Registrar

pri

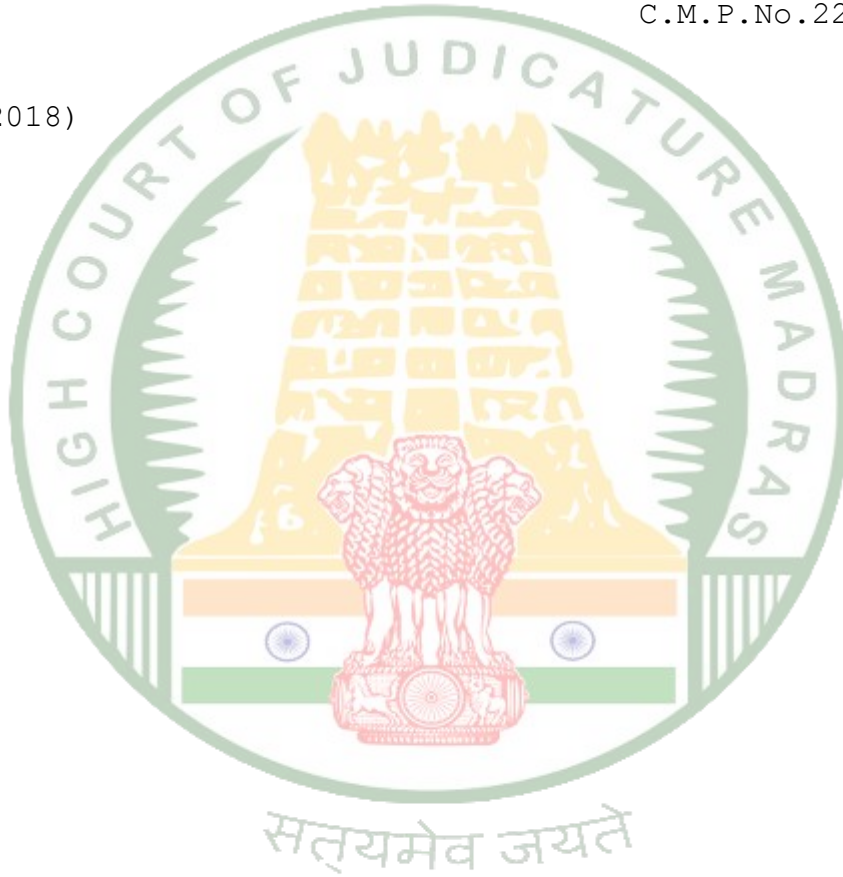
TO

The Sub Assistant Registrar, Original Side,
High Court, Madras.

+ 1 cc to MR. R. Murali, Advocate Sr.90683
+ 1 cc to Mr.S. Raghavan, Advocate SR.90415

O.S.A.No.343 of 2017
And
C.M.P.No.22233 of 2017

PPA (CO)
EU (23/01/2018)



WEB COPY