

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.03.2017

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.No.767 of 2017

and

C.M.P.No.3829 of 2017

The Branch Manager,
Reliance Capital India Ltd.,
Reliance Towers, Haddows Road,
Nungambakkam, Chennai 600 034. Petitioner/Petitioner

/versus/

1.K.Samad
2.S.Mehrunissa Samad Respondents/Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 30.11.2016 in I.A.No.13225 of 2016 in O.S.No.4307 of 2015 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Petitioner :Mr.K.Moorthy

For Respondents:Mrs.P.Uma

O R D E R

This Civil Revision Petition has been filed against the fair and decretal order, dated 30.11.2016 in I.A.No.13225 of 2016 in O.S.No.4307 of 2015 on the file of the I Assistant Judge, City Civil Court, Chennai.

2. According to the petitioner, the respondents herein filed a suit in O.S.No.4307 of 2015 against the petitioner herein for permanent injunction and other consequential reliefs. The said suit was decreed ex-parte on 30.09.2015 for non appearance of the plaintiffs/respondents herein. The petitioner came to know about the said exparte decree only at the time of receiving summon from the Court in the execution petition. Immediately, the petitioner has filed an application under Section 8 of the Arbitration and Conciliation Act and sent relevant documents directly to the respondents instead of sending the same to their counsel and the case was referred to the Lok Adalat for possibility of settlement. But, there was no amicable settlement between the parties.

3. Thereafter, the respondents/decreed holders filed a petition in E.P.No.208 of 2016 in O.S.No.4307 of 2015 before the I Assistant Judge, City Civil Court, Chennai. The petitioner has filed an application in I.A.No.13225 of 2016 under Section 5 of the Limitation Act to condone the delay of 241 days in filing the setting aside application in the above suit. The petitioner has filed another application in E.A.No.2816 of 2016 in E.P.No.208 of 2016 before the City Civil Court, Chennai praying to grant interim stay. In the said application, the facts have been wrongly stated. Therefore, the petitioner has withdrawn the said application and immediately, filed an application in I.A.No.2816 of 2016 in E.P.No.208 of 2016 praying to stay all further proceedings in the execution petition, till the disposal of O.S.No.4307 of 2015. But, the trial Court, without considering the reasons adduced in the affidavit, has dismissed the application in I.A.No.13225 of 2016 filed by the petitioner herein. Hence, the revision petitioner has filed the present civil revision petition for the aforesaid prayer.

4. The learned counsel appearing for the respondents would submit that the petitioner accepted the notice and summons and even though sufficient opportunities given to the petitioner, he did not choose to appear before the Court. However, there was no satisfactory or reasonable explanation rendered by the petitioner for condonation of delay and also the petitioner has not come to Court with clean hands and hence, the civil revision petition is liable to be dismissed.

5. I have heard the submissions made on both sides.

6. On perusal of the records, it would show that the respondents have filed the suit in O.S.No.4307 of 2015 for permanent injunction and other consequential relief and that suit was decreed ex-parte on 30.09.2015 for non-appearance of the petitioner/defendant. Subsequently, the petitioner has filed the application in I.A.No.13225 of 2016 in O.S.No.4307 of 2015 to condone the delay of 241 days in filing the setting aside application in the above suit. The petitioner has filed another application in E.A.No.2816 of 2016 in E.P.No.208 of 2016 before the City Civil Court, Chennai praying to grant interim stay. In the said application, the facts have been wrongly stated. Therefore, the petitioner has withdrawn the said petition. Subsequently, the petitioner has filed another application in the said execution petition praying to stay all other further proceedings in the execution proceedings till the disposal of the original suit. The Court below has not accepted the reasons stated in the affidavit filed by the petitioner and therefore, the contention of the petitioner was rejected on the ground that there was no reason on the part of the petitioner to

condone the delay of 241 days in filing the set aside petition in the above original suit in O.S.No.4307 of 2015.

7. The Hon'ble Supreme Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy and others reported in [2013(5) CTC 547] has held that the Court should liberal approach while dealing with the condoning the delay to set aside the exparte order. There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice, but are obliged to remove injustice.

8. In the above decision, the Hon'ble Apex Court, by showing liberal approach, has condoned the delay stating that sufficient reasons adduced in the affidavit. So far as the present case is concerned, the petitioner has stated reasons in the affidavit in support of the petition. However, in the interest of justice, for condoning the delay, cost will be imposed on the petitioner. Therefore, I am inclined to condone the delay and set aside the impugned order passed by the Court below in I.A.No.13225 of 2016 in O.S.No.4307 of 2015.

9. Accordingly, this Court passes the following orders:-

(1) The order dated 30.11.2016 passed in I.A.No.13225 of 2016 in O.S.No.4307 of 2015 on the file of the I Assistant Judge, City Civil Court, Chennai is set aside and the delay is condoned on payment of cost of Rs.5,000/- (Rupees five thousand only) to the respondents herein by the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(ii) In the event of the conditional order being complied with, the I Assistant Judge, City Civil Court, Chennai, is directed to restore the suit in O.S.No.4307 of 2015 to file and dispose of the same, on merits and in accordance with law, as expeditiously as possible, preferably within a period of 3 months from the date of receipt of a copy of this order.

(iii) In the event of the non-compliance of the conditional order, the Civil Revision Petition stands dismissed and the order passed by the trial Court stands confirmed.

10. With the above directions, the civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Post the matter after two weeks for reporting compliance.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

I Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.P.Uma, Advocate Sr.19311

C.R.P.No.767 of 2017

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srg 28/04/2017



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