IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.03.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

CRP (NPD) No.361 of 2015 and
MP.No.1 of 2015

V.Krishnakumar ...Petitioner

versus

N.M.Kittusamy ...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 25.08.2014 passed by the Principal Subordinate Judge, Coimbatore in I.A.No.360 of 2013 in A.S.C.F.R No.13588 of 2013.

For Petitioner : Mr.K.Ashok Kumar

For Respondent : Mr.N.Manokaran

O R D E R

The interlocutory application filed by the respondent in I.A.No.360 of 2013 to condone the delay of 1240 days in filing the application to set aside the ex parte decree was allowed by the First Appellate Court, notwithstanding the objection raised by the petitioner. Feeling aggrieved by the order, dated 25 August 2014, the respondent in I.A.No.360 of 2013 is before this court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The suit filed by the respondent in O.S.No.1938 of 2005 was dismissed by the Trial Court for non-prosecution, by judgment decree dated 9 February 2009. The respondent, long after the dismissal of the suit and more particularly, after a period of 1240 days filed an application to set aside the judgment and decree, after condoning the delay.

4. Before the First Appellate Court, the respondent stated that the erstwhile counsel failed to inform him about the progress of the case and finally, he was informed that the suit was dismissed for default.

5. The First Appellate Court, by way of a very brief order allowed the application. The order passed by the First Appellate Court indicates that the respondent failed to produce documentary evidence to substantiate his case.

6. The learned Judge simply observed that one more opportunity should be given to the respondent to substantiate his claim. There is no reason, much less than justifiable reason given by the First Appellate Court while allowing the application filed by the respondent.

7. The affidavit filed by the respondent is bereft of details. I am therefore of the view that opportunity should be given to the respondent to file a better affidavit indicating the actual reasons for the delay. This would enable the First Appellate Court to consider the application afresh in the light of the objection raised by the petitioner.

6. In the result, the order dated 25.08.2014 is set aside. The application in I.A.No.360 of 2013 is remitted to the First Appellate Court for fresh consideration. The respondent is given opportunity to file better affidavit indicating the actual reasons for the delay. The petitioner should be given opportunity to submit his response taking into account the better affidavit filed by the respondent.

K.K.SASIDHARAN., J.

(svki)

7. The learned Principal Subordinate Judge, Coimbatore is directed to consider the matter and pass a fresh order on merits and as per law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

8.The Civil Revision Petition is allowed to the extent indicated. above. No costs. Consequently, connected miscellaneous petition is closed.

27.03.2017

svki

To
The Principal Subordinate Judge,
Coimbatore.

CRP(NPD) No.361 of 2015

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