

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) Nos. 751 & 752 of 2014
and
M.P. Nos. 1 & 1 of 2014

J. Suresh

... Petitioner in both CRPs

VS.

Margadarsi Chits Private Limited
Kumaran Building, No.AA, 152
3rd Avenue, Anna Nagar
Chennai – 600 040.

...Respondent in both CRPs

These Civil Revision Petitions are filed under Section 115 of Civil Procedure Code against the common order dated 19.11.2013 made in E.A. Nos. 3190 & 3191 of 2013 in E.P.No.1274 of 2013 on the file of X Assistant City Civil Judge, Chennai.

For Petitioner : Mr. K.K. Muralidharan

For Respondent : Mr. D. Shivakumaran

ORDER

These Civil Revision Petitions arise against the common order dated 19.11.2013 made in E.A. Nos. 3190 & 3191 of 2013 in E.P.No.1274 of 2013 on the file of X Assistant City Civil Judge, Chennai.

2. Learned counsel for the petitioner submitted that based on the award passed in A.R.C. No. 384/2011, an exparte order was passed on 12.06.2013 in E.P. No. 1274/2013, in the execution proceedings against the petitioner, who is the 5th Joint Debtor. Challenging the same, the petitioner filed applications in E.A. No.3190/2013, to condone the delay of 17 days in filing the set aside petition and E.A. No.3191/2013 to set aside the ex-parte order dated 12.06.2013. According to the petitioner, he had been to his village to attend a funeral ceremony on 13.07.2013 and was able to return to Chennai only on 25.07.2013. Soon after his return, he contacted his counsel and filed an application to set aside the ex-parte order dated 12.06.2013, passed for attachment of movables belonging to the petitioner. Since there was a delay of 17 days in filing the said application, he also filed an application to condone the

delay. Without considering the reasons given by the petitioner, the lower Court dismissed both the applications. Aggrieved by the same, the present Revision Petitions have been filed.

3. Learned counsel for the respondent would submit that the delay was not properly explained by the petitioner and hence the court below has rightly dismissed the condone delay application and therefore nothing warrants this Court to interfere with the common order dated 12.06.2013.

4. Heard learned counsel for the petitioner and the learned counsel for the respondent and perused the material available on records.

5. Admittedly, an ex-parte order has been passed in E.P. No. 1273 of 2013 on 12.06.2013, against the petitioner. The petitioner has filed applications in E.A. No.3190/2013 and E.A. No.3191/2013, to condone the delay of 17 days in filing the application to set aside the ex-parte decree and to set aside the order dated 12.06.2013 passed in the E.P. Petition. The Court below, without considering the reasons stated in

the affidavit by the petitioner, has dismissed the said condone delay application, erroneously. Therefore, the petitioner has come up with this revision petition. Learned counsel for the petitioner would submit that the petitioner went to attend a funeral ceremony on 13.07.2013 and was also suffering from jaundice and therefore he could not contact his counsel in time. Hence, the reasons for non-appearance of the petitioner on the date of hearing and the delay in filing the petition are bonafide and ought to have been considered by the court below. Therefore, the order of the court below needs to be interfered with, by this Court.

6. Considering the above submissions of the learned counsel for the petitioner and the respondent, the common order dated 19.11.2013 made in E.A. Nos. 3190 & 3191 of 2013 in E.P.No.1274 of 2013 on the file of X Assistant City Civil Judge, Chennai, is set aside.

7. Accordingly, the Civil Revision Petitions are allowed, with a direction to the Court below, to dispose of the execution proceedings, in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

The Connected Miscellaneous Petitions are closed. No order as to costs.

24.03.2017

Index : yes / no

Speaking Order/ Non speaking order

avr

To

The X Assistant City Civil Judge,
Chennai

D.KRISHNAKUMAR, J.

avr

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& 752 of 2014
and
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