

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.03.2017**

CORAM:

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

C.R.P.(N.P.D.) No.1155 of 2013 and
MP.No.1 of 2013

M.Madhevu ... Petitioner

Vs

Jawahar ... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the common decree and judgement dated 19.12.2012 made in I.A.No.385 of 2012 in O.S.No.48 of 2011 on the file of the Subordinate Court, Nilgris.

For Petitioner : Mr.J.Franklin
For Respondent : Mrs.D.Rajalakshmi

ORDER

This revision petition is directed against the order dated 19 December 2012 in I.A.No.385 of 2012, dismissing the application filed by the petitioner to set aside the *ex parte* order after condoning the delay of 189 days.

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

3. The respondent filed the suit in O.S.No.48 of 2011 before the Subordinate Court at Uthagamandalam, praying for a money decree. The petitioner entered appearance before the trial court and took time for filing written statement. Since written statement was not filed on the stipulated day, the Court imposed costs. The petitioner paid the costs. However, written statement was not filed. The petitioner was therefore, set *ex parte*. Thereafter, *ex parte* evidence was taken. The trial Court decreed the suit

ex parte. The petitioner thereafter, filed an application to condone the delay of 189 days in filing the petition to set aside the *ex parte* decree. Since justifiable reasons were not given for the delay, the trial court dismissed the application. Feeling aggrieved, the petitioner filed this civil revision petition.

4. There is no dispute that the petitioner was given sufficient indulgence by the trial court to file written statement. The time was extended by the trial court subject to payment of costs. The petitioner paid the costs, pursuant to the direction given by the trial Court. Even then, the written statement was not filed. It was only under such circumstances, the petitioner was set *ex parte* and thereafter, *ex parte* decree was passed by the trial Court.

5. The petitioner in the affidavit filed in support of the interlocutory application contended that he was laid up and as such, he failed to file the written statement. It is true that the petitioner has not given clear reasons in support of his contention that on account of sickness he could not file the written statement. The trial Court after setting the petitioner *ex parte*, proceeded to hear the suit and passed an *ex parte* decree without considering the merits of the matter. The trial Court granted the decree as if the moment the defendant is set *ex parte*, the Court is bound to grant a decree in favour of the petitioner. The application submitted by the petitioner to set aside the *ex parte* decree has to be considered in the light of the judgment and decree passed by the trial Court without considering the merits of the matter. Since the suit in question is a money suit and on account of the background facts, I am of the view that one more opportunity should be given to the petitioner to contest the matter.

6. The petitioner has filed the written statement before this Court. In view of all these reasons, the dismissal order is liable to be set aside.

7. In the result, the order dated 19 December 2012 is set aside. The interlocutory application filed by the petitioner in I.A.No.385 of 2012 is allowed subject to payment of a

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sum of Rs.2,000/- [Rupees two thousand only] as costs. The costs amount shall be paid to the respondent within a period of four weeks from today.

8. The learned trial Judge is directed to receive the written statement and thereafter, consider the suit on merits and dispose of the same as expeditiously as possible and in any case, within a period of four months from the date of receipt of a copy of this order.

9. The civil revision petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

23.03.2017

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To
The Subordinate Court, Nilgris

C.R.P.(P.D.) No.1155 of 2013

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