

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 13.02.2017****CORAM****THE HON'BLE MR. JUSTICE M.V.MURALIDARAN****CRP(NPD)No.1367 of 2012
and
M.P.No.1 of 2012**

The Catholic Syrian Bank Ltd.,
Singanallur Branch,
Kamarajar Road,
Coimbatore – 641 015.
Rep. by its Manager

.. Petitioner

Vs

Ashok Kannan
(Respondent name amended vide order
of Court dated 21.10.2016 in CMP.16697/16
in CRP(NPD)No.1367 of 2012)

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the order dated 03.01.2012 passed in I.A.No.1456 of 2011 in
O.S.No.64 of 2006, on the file of the District Munsif Court, Palladam,
to set aside the same.

For Petitioner : Mr.V.Bhiman
for M/s.Sampathkumar and Associates

For Respondent : Mr.P.M.Duraisamy

ORDER

This Civil Revision Petition is filed by the 3rd defendant in O.S.No.64 of 2006 on the file of the learned District Munsif Court, Palladam, challenging the order and decree made in I.A.No.1456 of 2011, dated 03.01.2012.

2.The respondent herein as plaintiff filed the above suit against the revision petitioner and 2 others for the relief of partition and separate possession by dividing the suit property into 3 equal share and to allot one such share to the plaintiff and consequential permanent injunction from alienating the plaintiff's 1/3rd share in the suit property. In the said suit the revision petitioner/3rd defendant was set ex-parte and to set aside the ex-parte decree, he filed I.A.No.1456 of 2011 seeking to condone the delay of 556 days in filing the application to set aside the ex-parte decree.

3.The reason attributed by the revision petitioner to condone the said delay was due to his work pressure and inconvenience, he was unable to attend in the above suit before the lower Court. Further his Advocate failed to inform about the ex-parte decree passed against the

revision petitioner. The petitioner came to know about the ex-parte decree only after receiving notice in the final decree application filed by the respondent herein. Thereafter the petitioner has appointed another Advocate to contest the case and through him the present application was filed.

4.Per contra, the respondent herein denied the averments made in the affidavit filed in support of the condone delay petition. It is stated by the respondent herein that even after receipt of notice in final decree application the petitioner has not filed the above application to condone the delay in filing the ex-parte decree set aside petition. Hence it is submitted by the respondent herein that there is no sufficient reason assigned by the petitioner herein to accept the delay of 556 days in filing the petition.

5.The trial Court upon considering the case on either side, dismissed the delay petition holding that the revision petitioner has not assigned sufficient reason to condone the delay and the reason assigned by the revision petitioner is lacking bonafied.

6.I heard Mr.V.Bhiman for M/s.Sampathkumar and Associates,

learned counsel for the petitioner and Mr.P.M.Duraisamy, learned counsel for the respondent and perused the entire materials available on record.

7.As for as section 5 application is concerned each and every day delay should be explained properly and there is no quarrel over the said settled position of law. The said yardstick cannot be applied mechanically in all the cases and each case has to be decided independently based on the facts and circumstances of the cases.

8.In this regard, it is useful to refer the Judgment of this Court reported in 2016 (5) CTC 117, wherein it is held that

“When a Court of law deals with an application to condone the delay filed under section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an application to condone the delay as per section 5 of the Limitation Act, belatedly, no party will file the same with a malafide intention. If a party files a delay condonation application belatedly, he or she runs a serious risk.

However, if an application filed under section 5 of

the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to part take in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at the early stage the cause of justice will be certainly defeated. In a condonation of delay application filed under section 5 of the Limitation Act, 1963 the length and breath of the delay is not a material / relevant factor”.

9. In the case on hand, the reason attributed by the revision petitioner for condone the delay of 556 days in setting aside the ex-parte decree is concern, it is lacking merits. The revision petitioner cannot find fault with his Advocate, it is his duty to contact his advocate regularly and know about the case details frequently.

10. Considering the facts and circumstances of the case and in the light of the decision cited supra, I am of the view that one more opportunity shall be given to the revision petitioner to defend the suit to get a decree on merits which would meet the ends of justice. At the

same time this Court also thinks about the inconvenience caused to the other side because of the delay and the same shall be compensated on terms.

11. In view of the discussion above, I am inclined to condone the delay, however the delay will be condoned on payment of cost of Rs.15,000/- to be paid by the revision petitioner to the other side.

12. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order dated 03.01.2012 passed in I.A.No.1456 of 2011 in O.S.No.64 of 2006, on the file of the District Munsif Court, Palladam, on condition that the petitioner shall pay a sum of Rs.15,000/- to the respondent herein within a period of four weeks from the date of receipt of a copy of this order; सत्यमेव जयते

(b) the trial Court is directed to number the set aside application and dispose of the same within a period of three weeks thereafter, by giving to notice to both parties. Consequently, connected miscellaneous petition is

closed.

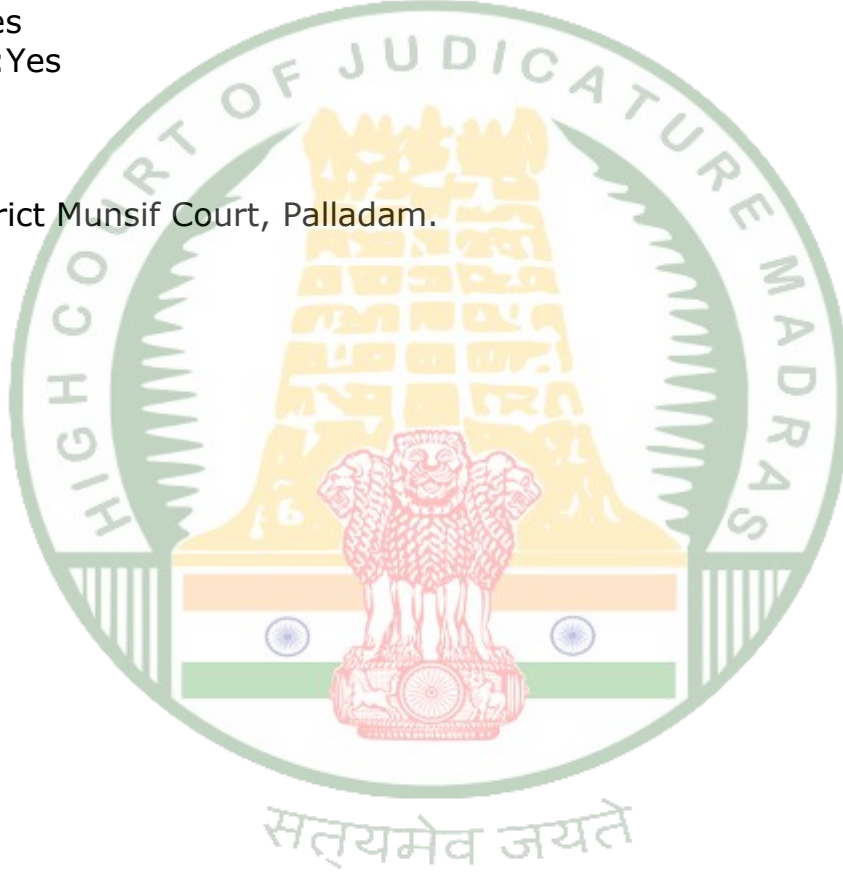
13.02.2017

Note: Issue order copy on 04.02.2019.
vs

Index: Yes
Internet: Yes

To

The District Munsif Court, Palladam.



WEB COPY

M.V.MURALIDARAN,J.

VS



**CRP(NPD)No.1367 of 2012
and
M.P.No.1 of 2012**

WEB COPY 13.02.2017