

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

Civil Revision Petition (NPD) No.1539 of 2013
and M.P.No.1 of 2013

T.R.Paramasundaram

..Petitioner

Vs.

C.Kandasamy

..Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 06.10.2012 made in I.A.No.414 of 2012 in Un-numbered C.M.A.No. Nil of 2012 on the file of the learned Principal District Judge of Erode.

For petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Jayaprakash

O R D E R

This Civil Revision Petition is directed against the order dated 06 October 2012 in I.A.No. 414 of 2012 dismissing the application filed by the petitioner to condone the delay of 71 days in filing the Civil Miscellaneous Appeal.

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

3. The respondent filed a suit in O.S.No. 237 of 2008 for a money decree based on promissory note. The suit was decreed *ex parte*. Thereafter, at the instance of the petitioner, *ex parte* decree was set aside on 26 November 2009. Since the petitioner failed to contest the matter, once again the trial Court passed *ex parte* decree. The petitioner filed an application to set aside the *ex parte* decree. The trial Court dismissed the said application. The order was challenged before the first appellate Court along with an application in I.A.No.414 of 2012 to condone the delay of 71 days.

4. The learned appellate Judge was of the view that each day's delay has to be explained. Since jaundice was taken as the reason for the delay, the trial Court observed that proof regarding such treatment was not produced by the petitioner.

5. The delay in the subject case is only 71 days. According to the

petitioner, he was taking native treatment for jaundice. The petitioner cannot be expected to produce the medical certificate, in view of his taking native treatment for jaundice. In any case, considering the reasons for the delay, the first appellate Court ought to have condoned the delay. I am, therefore, of the view, that the delay deserves to be condoned.

6. In the result, the order passed by the learned Principal District Judge dated 06 October 2012 is set aside. The application in I.A.No. 414 of 2012 is allowed, subject to the condition that the petitioner shall pay a sum of Rs.3,000/- (Rupees Three Thousand Only) by way of costs to the respondent. The cost amount shall be paid on or before 07 June 2017, failing which, the application would be dismissed without any further reference to this Court.

K.K.SASIDHARAN, J.

gms/maya

7. The learned Principal District Judge, Erode is directed to take up the appeal and dispose of the same as expeditiously as possible.

The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2017

gms/maya

To
The Principal District Judge of Erode.

C.R.P. (NPD)No.1539 of 2013

