

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM

THE HONOURABLE **Mr.JUSTICE D. KRISHNAKUMAR**

CRP NPD.NO.1763/2016 & CMP NO.9334/2016

P.Periyathambi

..Petitioner

-Vs-

K.Paramasivam

..Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the order of the Learned I Additional District Munsif Court at Salem dated 05.03.2016 made in I.A.No.65 of 2015 in O.S.No.346/2012.

For Petitioner : Mr.R.Venkatesh

For Respondent : Mr.V.Rajesh Babu

ORDER

This Civil Revision Petition is filed to set aside the order of the learned I Additional District Munsif Court at Salem dated 05.03.2016 made in I.A.No.65 of 2015 in O.S.No.346/2012.

2. According to the petitioner, the respondent filed the suit in O.S.No.346 of 2012 for declaration and delivery of possession of the suit property. The respondent herein stated that the legal notice was issued to the defendant on 23.09.2011 through his counsel calling upon the petitioner to pay the arrears of rent, vacate the premises and hand over vacant possession. The petitioner has refused to receive the said notice and the notice sent through registered post was also returned as refused. The petitioner filed an application in I.A.No.65/2015 in O.S.No.346/2012 to condone the delay of 693 days in filing an application to set aside the ex parte decree. After considering the interest of the parties concerned, the Court below dismissed the said application. As against the order passed by the Court below, the petitioner has preferred the present Civil Revision Petition before this Court.

3. The learned counsel for the petitioner would submit that the delay caused in filing the application, is due to the sudden death of the petitioner's son in the road accident and due to the death of the petitioner's wife and hence he was unable to meet the counsel and instruct him to file and appeal. The trial Court has not appreciated the

case of the petitioner and dismissed the condone delay application. The trial court has to show liberal approach to condone the delay. Hence, the petitioner prays to set aside the order passed in the aforesaid I.A.No.65/2015 in O.S.No.346/2012.

4.Per contra, the learned counsel for the respondent would submit that the petitioner has filed an application to condone the inordinate delay in filing the application to set aside the exparte decree. The petitioner has not produced any materials before the Court to prove the claim made in the petition. Therefore, the Court below has rightly rejected the case of the petitioner and dismissed the aforesaid I.A.No.65/2015 in O.S.No.346/2012.

5.Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused materials placed before this Court.

6.It is seen from the material records that the legal notice was sent to the defendant on 23.09.2011 and the aforesaid notice was not received by the petitioner/defendant in the suit. Subsequently, the

respondent sent the notice through registered post and the same was also returned as refused. Thereafter, the petitioner/defendant continued to be default in payment of rent. The petitioner has not filed any written statement before the trial Court and subsequently, the suit was set exparte and exparte decree was passed by the Court below stating that due to the sudden death of the petitioner's son and the petitioner's wife he was not able to contact the counsel to instruct the counsel to contest the case. The said statement made by the petitioner was denied by the respondent. It is also seen from the record that the petitioner had not chosen to show sufficient cause by adducing oral and documentary evidence in the said application. Even the affidavit filed by the petitioner before the Court below shows bereft of particulars about the reasons stated in the affidavit. The application has been filed after a lapse of 693 days to set aside the exparte decree. The Hon'ble Supreme Court in ***H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER***, reported in **(2015) 1 SCC 680**, held as follows:

" 24. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

Therefore, in the light of the present case, above decision, the petitioner has not shown sufficient reasons for the delay of 693 days in filing an application to set aside the ex parte decree. Considering the nature of the relief prayed in the suit as well as the conduct of the petitioner, I am not inclined to interfere with the order passed by the Ist Addiitonal District Munsif Court, Salem.

7.The Civil Revision Petition is dismissed. No Costs.
Consequently, the connected miscellaneous petition is closed.

22.03.2017

KP

Index:Yes/No

Internet:Yes/No

Speaking Order/Non Speaking Order

To

The Ist Additional District Munsif Court,

Salem.

D. KRISHNAKUMAR., J.

KP

CRP NPD.NO.1763/2016

20.04.2017

<http://www.judis.nic.in>