

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3287 of 2010
and
M.P.No.1 of 2010**

P.Narayanan .. Petitioner

Vs.

V.S.Palaniyappan .. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order of the Subordinate Judge's Court at Tiruchengode, dated 13.04.2010 in I.A.No.375 of 2008 in O.S.No.662 of 2002.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.P.Jagadeesan

ORDER

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Section 5 Application filed by the respondent/plaintiff to restore the suit which was dismissed for default was allowed, against which the present civil revision is filed by the respondent/defendant.

2.The respondent/plaintiff filed a suit against the revision petitioner in O.S.No.652 of 2002, on the file of the Subordinate Judge, Thirunchengode for recovery of money on the basis of pronote. The said suit was dismissed for default by order dated 14.07.2008, hence an application in I.A.No.375 of 2008, was filed to condone the delay of 743 days in filing application to restore the suit.

3.According to the respondent/plaintiff the said suit originally filed before the learned Sub Court, Sangagri and subsequently it was transferred to learned Sub Court, Nammakkal. It is further stated by the respondent that he also shifted his house to other area and hence Ex-P1 Letter sent by his counsel to his old address was returned. Therefore the respondent/plaintiff was not in a position to appear before the Court on 14.07.2006 hence the above suit was dismissed for default.

4.Rebutting the said contention of the plaintiff, the learned counsel for respondent contented that Ex-P1 was created for the propose of this application. Admittedly the respondent/plaintiff has not given any sufficient or acceptance reason for the delay of 743 days.

Therefore the lower Court ought not to have condoned the delay only on the strength of Ex-P1. Therefore, the learned counsel for the revision petitioner prays to set aside the order of the Court below and allow this Civil Revision Petition.

5. On the other hand, it is submitted by the learned counsel for the respondent that the Trial Court has rightly condoned the delay by accepting the reason assigned by the plaintiff and the same is not warranting interference by this Court.

6. I heard Mr.P.Valliappan, learned counsel for the petitioner and Mr.P.Jagadeesan, learned counsel for the respondent and perused the entire materials available on record.

7. The perusal of records discloses that before the trial Court, the plaintiff was examined as PW-1 and marked 9 documents as Ex-P1 to P9. Out of 9 documents, except Ex-P1 all other documents are not relevant to the facts and therefore the trial Court has accepted Ex-P1 postal card and the explanation offered by the respondent in respect of return of postal card which was sent to the old address of the plaintiff by his counsel. To disbelieve the said document the revision petitioner

has not produced any evidence on his side. Further, the revision petitioner has not let in evidence to rebut the contention made on the side of the respondent /plaintiff. Therefore, considering the same the trial Court has allowed the condone delay petition by giving one more opportunity to the respondent herein on payment of cost of Rs.2,000/-. In my considered opinion, the discretion exercised by the trial Court in condoning the delay cannot be held to be unsustainable and the same is liable to be affirmed.

8.Hence, I do not find any merits in this civil revision petition and the same is liable to be dismissed.

9.In the result:

(a) The civil revision petition is dismissed by confirming the order passed in I.A.No.375 of 2008 in O.S.No.662 of 2002, dated 13.04.2010, on the file of the learned Subordinate Judge, Thiruchengode, on condition that the respondent should pay totally a sum of Rs.30,000/- to the petitioner or his counsel within a period of four weeks from the date of receipt of a copy of this order;

(b) On production of the payment receipt, the trial Court namely, learned Subordinate Judge, Thiruchengode, is hereby directed to

number the set aside application and pass orders within a period of 15 days, by giving notice to both parties, thereafter, on passing order in the set aside application, the trial Court is directed to take up the suit on day to day basis without giving any adjournment to either parties, since the suit is for the year 2002, and to dispose of the suit within a period of two months. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit. Consequently, connected miscellaneous petition is closed.

17.03.2017

vs

Note: Issue order copy on 29.01.2019

Index: Yes

Internet: Yes

To

The Subordinate Judge, Thiruchengode.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.3287 of 2010
and
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