

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.2126 of 2012  
and M.P.No.1 of 2012

Sarasu

.. Petitioner

vs

Ravi @ Alagappan

.. Respondent

Revision filed under Article 227 of Constitution of India against the fair and decretal order dated 14.10.2011 passed in I.A.No.3253 of 2010 in O.S.No.595 of 2007 on the file of the II Additional District Munsif, Puducherry.

For Petitioner : Mr.T.S.Baskaran

For Respondent : No appearance

**ORDER**

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The petitioner has filed this civil revision petition seeking to set aside the fair and decretal order dated 14.10.2011 passed in I.A.No.3253 of 2010 in O.S.No.595 of 2007 on the file of the II Additional District Munsif, Puducherry.

2. The brief facts of the case are as under: The revision petitioner is the plaintiff. The suit was filed to direct the respondent defendant to pay a sum of Rs.72,000/- with interest at the rate of 24% p.a. on principal amount of Rs.50,000/- from the date of the suit till the amount is fully realized.

3. The learned II Additional District Munsif, Puducherry, by judgment dated 26.9.2007, held that the suit claim is proved and decreed the suit as prayed for, of course restricting the interest rate to 6% p.a. Based on the same, the petitioner plaintiff had filed an application seeking execution of the said judgment and decree.

4. Thereafter, the respondent defendant filed an application in I.A.No.3253 of 2010, seeking to set aside the ex parte judgment and decree dated 26.9.2007. The Court below, taking note of the submission of the respondent defendant qua his official transfer and employment at Coimbatore and his continuous inability to file his objection, by order dated 14.10.2011, allowed the application by directing the respondent defendant to pay costs of Rs.1000/-.

5. Assailing the said order dated 14.10.2011, the present revision is filed.

6. The learned counsel appearing on behalf of the petitioner plaintiff submitted that the towering delay of 1117 days in representation of the application was condoned without any valid reasons. The counsel added that each days delay needs to be explained, but, in the case on hand, the delay of 1117 days has been condoned on inexplicable grounds.

7. It is further submitted that when the respondent defendant had entered appearance in the execution proceedings initiated by the petitioner plaintiff and sale of immovable property was ordered on 26.7.2010 and the sale was fixed on 16.12.2010, the respondent defendant without challenging the said proceedings has filed an application for condonation of delay in representation of the application to set aside the ex parte decree and the said vital factor was not considered by the court below.

8. Even though the matter pertains to the year 2012, the respondent had not chosen to argue the matter or to file a counter

affidavit till date.

9. Heard the learned counsel for the petitioner and perused the documents available on record. There was no representation on behalf of the respondent, despite notice.

10. A bare perusal of the documents available on record shows that the suit was decreed way back on 26.9.2007. It is also seen from the records that the order of attachment was made on 8.6.2007 and the property was duly attached on 25.6.2007. Admittedly, the respondent defendant had not chosen to assail the said order till date.

11. It is to be noted that the respondent defendant entered appearance in the execution proceedings. It is not as if the entire proceedings took place unbeknownst to him. The sale of the property was ordered on 26.7.2010 and the sale was fixed on 16.9.2010 and later it was re-scheduled to 16.12.2010. At each stage, the respondent defendant was participating without raising any objection, but suddenly he woke up from the slumber and filed an application with delay of 1117 days.

12. The only reason that weighed with the court below was that the respondent defendant was transferred from Puducherry to Coimbatore and, therefore, he was not in a position to follow up the case with his counsel. The other reason that was pleaded by the respondent defendant and found favour with the Court below was that the returned petition was misplaced while shifting the court to the new complex.

13. On the face of it, the delay is enormous, being 1117 days. While Courts insist that each days delay is to be explained, they also emphasize the need to enable the parties to avail an adjudication on merits than through ex parte decrees. A decent balance between these two extremes has to be maintained. Ultimately, what needs to be verified by the court in such matters is as to whether the party which approaches the Court to condone delay has exhibited due diligence and was prevented by any reasonable cause.

14. In the matters of condonation of delay in presenting applications to set aside the ex parte decrees, one important factor which needs to be verified is as to whether the petitioner in such



application have been served with notices. This results in substantial difference in the approach to the matter. If the party was in total darkness of the proceedings on account of non service of notice, length of delay becomes immaterial. On the other hand, if a party was served with notice and did not care to respond to the proceedings, the Court will be reluctant to condone delay even if it is not that enormous.

15. The petitioner specifically pleaded that the respondent defendant had entered appearance in the execution proceedings and the sale had in fact been ordered and scheduled to be held on 16.12.2010 and at that belated stage, the respondent defendant had filed an application seeking to condone the delay. Such delay, in my considered opinion, cannot be condoned without any convincing reason and sufficient explanation should be given by the respondent defendant in this regard with documents justifying the delay. Inasmuch as this Court is not convinced with the reasoning adopted by the Court below in condoning the delay, it is just and proper to remit the matter for fresh consideration to the Court below.

16. For the foregoing reasons, this revision petition is allowed and the order dated 14.10.2011 made in I.A.No.3253 of 2010

is set aside on condition that the petitioner plaintiff pays a sum of Rs.3,000/- to the counsel for the respondent before the Court below within fifteen days from the date of receipt of a copy of this order. On compliance of the said condition, the Court below is directed to take up the set aside application and put on notice both sides and dispose of the application within three months from the date of receipt of a copy of this order. Both sides are directed to co-operative for expeditious disposal of the application and the suit. No costs. Consequently, M.P.No.1 of 2012 is closed.

**05.01.2017**

Note: Issue order copy on 09.04.2018  
vs

Index : Yes/No  
Internet : Yes/No

To

The II Additional District Munsif  
Puducherry.

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M.V.MURALIDARAN, J.

VS



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