

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(NP.D.) No.2176 of 2013 and
M.P.No.1 of 2013

V.Shanmugam

...Petitioner

versus

T.Thanikaimani

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order made in I.A.No.7 of 2012 in O.S. No.570 of 2010 dated 14.02.2012 on the file of Sub-Ordinate Judge at Salem.

For Petitioner : Mr.Uday

For Respondent : Mr.T.M.Hariharan

ORDER

This Civil Revision Petition is directed against the order dated 14 February, 2012 in I.A.No.7 of 2012, dismissing the application filed by the petitioner to condone the delay of 208 days in filing the application to set aside the ex parte decree.

2. Heard the learned counsel for the petitioner. I have also heard the learned counsel for the respondent.

3. The respondent instituted a suit in O.S.No.570 of 2010 before the Principal Subordinate Judge, Salem for specific performance. The petitioner entered appearance and thereafter, failed to appear before the Trial Court. The Trial Court therefore passed an ex parte judgment and decree as prayed for.

4. The petitioner filed an application to set aside the ex parte decree along with an application in I.A.No.7 of 2012 to condone the delay.

5. The petitioner in the affidavit filed in support of the application in I.A.No.7 of 2012 contended that due to illness, he could not meet his counsel for the purpose of giving instructions and the same resulted in passing the decree ex parte. The learned Trial Judge was of the view that sufficient reasons were not furnished by the petitioner. The application was therefore dismissed.

6. I have directed the learned counsel for the respondent to produce the copy of the judgment to ascertain as to whether merits of the claim was considered by the learned Trial Judge while decreeing the suit ex parte. The judgment produced by the respondent indicates that the Trial Court passed the judgment and decree only on account of the absence of the petitioner and not on merits. There was no consideration of merits of the matter by the learned Judge. I am therefore of the view that the background facts justifies the condonation of delay, so as to enable the petitioner to appear before the Trial Court and submit his case on merits. It is worth mentioning herein that the petitioner has already filed written statement along with the application in I.A.No.7 of 2012.

7. In the result, the order dated 14 February, 2012 is set aside. The application in I.A.No.7 of 2012 is allowed, subject to the condition that the petitioner shall pay a sum of Rs.2000/- as costs to the respondent. The cost amount shall be paid to the respondent on or before 8 June 2017, failing which, the application in I.A.No.7 of 2012 will be dismissed summarily without any further reference to this Court.

K.K.SASIDHARAN,J.

(svki)

8. The learned Principal Subordinate Judge, Salem is directed to post the suit on 12 June 2017 and dispose of the same as expeditiously as possible, and in any case, within a period of five months from the date of receipt of a copy of this order.

9. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2017

svki

To

The Principal Subordinate Judge,
Salem

C.R.P.(P.D.) No.2176 of 2013