

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
C.R.P. No.3135 of 2016

B.Govindasamy

.. Petitioner

Vs

S.Jagadesan rep by his
power agent Manavalan

.. Respondent

Prayer: Civil Revision Petition filed under Article 115 of the Civil Procedure Code praying to set aside the fair and decretal orders dated 06.06.2016 in I.A.195 of 2010 in O.S.No.144 of 2000 before the Sub Court, Panruti.

For Petitioner : Mrs.R.Meenal

For Respondent : Mr.R.Sunil Kumar

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 06.06.2016 in I.A.195 of 2010 in O.S.No.144 of 2000 on the file of Sub Court, Panruti.

2. The learned Counsel for the petitioner submitted that the petitioner has filed an application in I.A.195 of 2010 before the Court below seeking to condone the delay of 64 days in filing a petition to set aside the ex-parte final decree passed against the petitioner on 25.02.2010. The said application seeking condonation of delay was dismissed by the Court below. Therefore the petitioner has filed the present Civil Revision Petition before this Court.

3. The learned Counsel further submitted that the petitioner has filed an affidavit stating that the petitioner was affected by diabetes and was taking treatment continuously and had not received any communication from his advocate to prepare counter and in all the connected three petitions, ex-parte decree was passed by the Court below. Therefore, the petitioner has filed the present petition to set aside the ex-parte final decree passed by the Court below, stating that only due to bonafide reason, the delay occurred in filing the petition.

4. The learned counsel for the respondent submitted that the Court has considered the delay petition and dismissed the same by observing that there is no documentary evidence to prove the

illness and treatment taken by the petitioner and the petitioner has not come to Court with clean hands. The petitioner has filed this petition to drag on the case. Therefore, the Civil Revision Petition may be dismissed.

5. By considering the submissions made by both the counsels and on perusal of the application filed for condonation of delay of 64 days in filing an application under Order-9 Rule-13 of CPC to set aside the ex-parte final decree passed on 25.02.2010 this Court is of the view that the delay is due to bonafide reasons as stated in the affidavit and therefore, an opportunity may be given to the petitioner to challenge the final decree proceedings.

6. By considering the decision of the Hon'ble Supreme Court reported in Esha Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy and others [2013(5) CTC 547] wherein, the Hon'ble Supreme Court has held that the Court should liberal approach while dealing with the condoning the delay to set aside the exparte order. There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. The above said judgment has been followed by this Court in the case of S.Krishnan v. S.Ganeshan C.R.P.(PD) No.140 of 2010 dated 26.04.2016.

7. In the light of the above decision and by considering the facts and circumstances of the case, the petitioner has stated reasons in the affidavit that as he was suffering from diabetes, he could not contact his counsel. I have no hesitation to condone the delay and to set aside the order of the Court below.

8. The Civil Revision Petition is allowed with a direction to the Court below to dispose of the application filed to set aside the ex-parte final decree, as expeditiously as possible. No order to costs.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

dpq

To

The Sub Court, Panruti.

+1 cc to Mrs.R.Meenal Advocate sr 18797

+1cc to M/s.R.Sunil Kumar,Advocate sr.18620(5/6/2017)

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