

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM

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

C.R.P. (PD) No.3459 of 2013

Palanathal

.. Petitioner

vs

1.Balasubramanian

2.Eswari

.. Respondents

Revision filed under Article 227 of Constitution of India against the order passed in I.A.No.131 of 2013 in O.S.No.176 of 2011, dated 03.7.2013 on the file of District Munsif Court, Dharapuram.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.M.K.Raja

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ORDER

This revision is directed against the order of the District Munsif, Dharapuram in I.A.No.131 of 2013 in O.S.No.176 of 2011, dated 03.07.2013, allowing the petition filed by the respondents herein under Section 5 of the Limitation Act on condition that they should pay a sum of Rs.250/- towards cost for allowing I.A.No.131 of 2013 on or

before 11.08.2013, failing which the petition shall stand dismissed. The petitioner herein is the plaintiff in the suit and she filed the suit for declaration and permanent injunction.

2. The respondents herein are defendants 1 and 4 in the suit. They filed petition being I.A.No.131 of 2013, to condone the delay of 150 days in filing the petition to set aside the ex parte decree dated 03.07.2013. In the petition, the defendants 1 and 4 alleged that due to non-filing of the written statement, they have been set ex parte and ex parte decree has been passed in the suit. It is also stated that since lot of complaints were filed by the plaintiff before Dharapuram and Kangeyam police stations and also before the Superintendent of Police, Tiruppur, the defendants 1 and 4 were in the process of approaching the High Court for obtaining bail in the respective cases. Therefore, the defendants 1 and 4 were not in a position to meet their advocate and give instructions to file the written statement in the suit. The non-filing of the written statement in time is neither wilful nor wanton. The defendants 1 and 4 have got a good case in the suit. Hence, they prayed for condonation of delay of 150 days in filing the petition to set aside the ex parte decree.

3. Resisting the petition, the plaintiff has filed the counter stating that the defendants 1 and 4 have not given the correct details as to on what dates they appeared before the police stations for enquiry and what was the crime number. The allegations made in the affidavit are bald allegations. In the suit, the defendants 1 and 4 have taken several adjournments for filing written statement, but wantonly they have not filed the written statement and they have been set ex parte on 03.11.2011 and subsequently, the suit was decreed on 20.12.2011. The petition is devoid of merits and prayed for dismissal of the same.

4. Upon consideration of the rival submissions, the trial Court allowed the petition on condition that the defendants 1 and 4 should pay cost of Rs.250/- to the plaintiff on or before 11.08.2013, failing which the petition shall stand dismissed. The trial Court directed the petition to be listed on 12.08.2013. Aggrieved by the same, the plaintiff has filed the present revision.

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5. I heard Mr.C.Prakasam, learned counsel for the petitioner/plaintiff and Mr.M.K.Raja, learned counsel appearing for the respondents/defendants 1 and 4. Perused the materials available on

record.

6. The learned counsel for the petitioner/plaintiff submitted that the defendants 1 and 4 have wantonly failed to file the written statement in the suit. The reasons stated in the affidavit for condoning the delay were not correct and the trial Court has erred in allowing the petition on payment of cost. He submitted that out of four defendants, only defendants 1 and 4 have filed the petition to set aside ex parte decree with delay condonation petition and the other defendants 2 and 3 have not come forward to file petition to set aside the ex parte decree.

7. The learned counsel for the defendants 1 and 4 submitted that only after satisfying the reason given by the defendants 1 and 4, the trial Court allowed the petition on payment of cost. He submitted that the order of the trial Court is well founded and no interference is required.

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8. The point arises for consideration is whether the trial Court was right in allowing the petition on payment of cost of Rs.250/- payable by the defendants 1 and 4.

9. It appears that while allowing the petition to condone the delay of 150 days in filing the petition to set aside the ex parte decree, the trial Court observed that in the absence of specific averment in the counter filed by the plaintiff that she had not preferred any police complaint against the defendants 1 and 4 in any police station and that the defendants 1 and 4 were never called for any enquiry, the trial Court was of the view that there had been police complaints and registration of cases and for which the defendants 1 and 4 were forced to take appropriate remedies. The trial Court further held that the defendants 1 and 4 have got reasonable excuse for not filing the petition to set aside the ex parte decree in time. Accordingly, the trial Court allowed the petition, subject to payment of cost of Rs.250/- payable by the defendants 1 and 4 to the plaintiff.

10. In *Pavayammal and another v. S.N.Chockalingam and others*, reported in 2009 (5) CTC 414, it was held that liberal view has to be taken while dealing with the application for condonation of delay. Therefore, the trial Court was right in allowing the petition, however, subject to payment of costs.

11. As stated supra, the plaintiff has filed the suit for declaration and permanent injunction. When the suit is for declaration and permanent injunction, necessarily the defendants in the suit have to be heard by giving them an opportunity to defend the suit.

12. In *N. Balakrishnan v. M. Krishnamurthy*, reported in (1998) 7 SCC 123, the Hon'le Supreme Court held thus:

"12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice"

13. Generally delays in preferring petition to condone the delay in filing petition to set aside the ex parte decree/restore the suit are required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of *bona fide* is imputable to the party seeking condonation of delay.

14. In the present case, as noted above, the delay in filing petition to set aside the ex parte decree is 150 days. Length of delay is

not the criteria. In appropriate cases, even the long range of delay could be condoned. Even if the trial Court has declined to condone the delay, the superior Court would be free to consider the cause shown for the delay afresh. I find that sufficient cause has been shown by the defendants 1 and 4 for condonation of delay and the trial Court has also rightly exercised the discretion properly. But it appears that the payment of cost ordered by the trial Court, while allowing the petition, is very low. Therefore, considering the nature of suit and also the prejudice caused to the other side, the cost of Rs.250/- ordered by the trial Court needs to be enhanced.

15. In the result:

(a) the Civil Revision Petition is dismissed and the respondents are directed to pay cost of Rs.5,000/- to the learned counsel appearing for the petitioner/plaintiff Mr.C.Prakasam, **within a period of three weeks from today**, failing which the petition being I.A.No.131 of 2013 in O.S.No.176 of 2011, shall stand dismissed;

(b) the trial Court is directed to number the petition to set aside the ex parte decree and dispose of the same within a period of one month thereafter, by giving notice to

either parties;

(c) after the disposal of the petition to set aside the ex parte decree, the trial Court is directed to dispose of the suit within a period of three months thereafter.

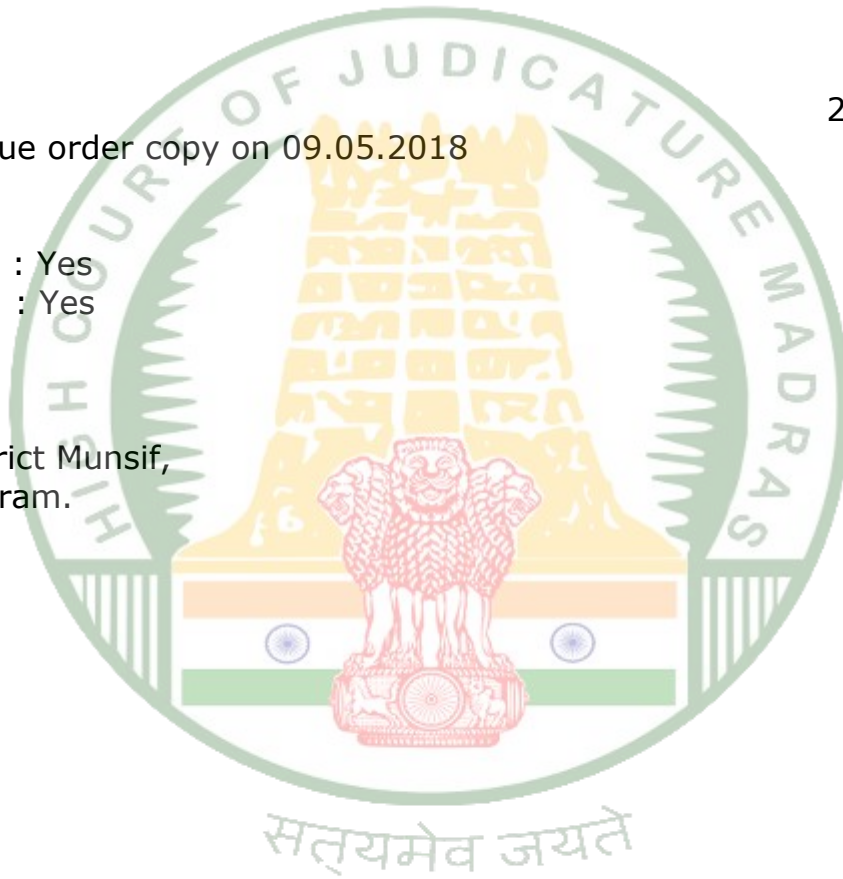
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Note: Issue order copy on 09.05.2018
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Index : Yes
Internet : Yes

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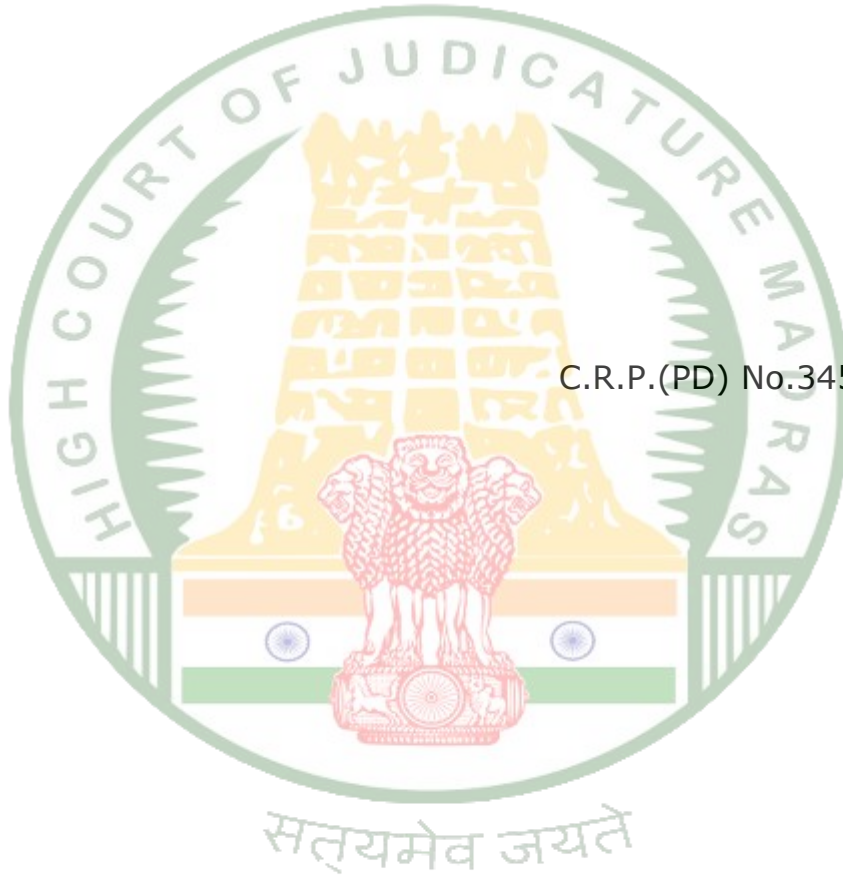
The District Munsif,
Dharapuram.



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M.V.MURALIDARAN, J.

VS



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