

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM

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

**CRP(NPD)No.4740 of 2012
and
M.P.No.1 of 2012**

R.Duraisamy .. Petitioner

Vs

G.Karthick .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 13.09.2012 made in I.A.No.39 of 2012 in O.S.No.183 of 2010, on the file of the Subordinate Judge, Tiruchengode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.I.C.Vasudevan

ORDER

This civil revision petition is directed against the Fair and Decretal Order dated 13.09.2012 made in I.A.No.39 of 2012 in O.S.No.183 of 2010 on the file of the learned Subordinate Judge, Tiruchengode.

2.The Revision petitioner is the defendant in the above suit filed by the respondent for the relief of directing the revision petitioner to render true and correct accounts of the receipts and expenses made by the revision petitioner as power of attorney agent of the respondent /plaintiff for suit properties and pay the amount found due.

3.It is the case of the respondent / plaintiff that revision petitioner herein has acted as power of attorney agent of the respondent but failed to render proper accounts. Hence the above suit.

4.The Trial commenced and evidence was adduced by the respondent / plaintiff and the suit remained posted for the evidence of the revision petitioner.

5.However the revision petitioner failed to adduce evidence on his behalf and accordingly he was found set Ex parte on 14.3.2011 and an Ex-Parte decree came to be passed on 14.3.2011.

6.In the said factual backdrop, the revision petitioner came up with an application to set aside the Ex-Parte decree contending that his absence was neither wanton nor willful but because of his illness on

the contemporary period.

7.It is his case that in the contemporary period of his absence before Trial Court, he suffered serious illness and further when the case was pending before the Learned District Judge of Namakkal, he was duly following the suit. Later due to transfer of suit before the Trial Court and that he also suffered serious illness at the same time, he could not follow the suit.

8.As the application to set aside Ex Parte Decree was not made in time and there was delay of 263 days, the revision petitioner came up with the above Interlocutory Application in I.A.No.39 of 2012 under Section 5 of the Limitation Act to condone the delay of 263 days incurred in filing the above set aside application. The said application was dismissed by the Trial Court holding that the reason stated by the revision petitioner is unacceptable. The said order is under challenge in this civil revision petition.

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9.I heard Mr.M.Guruprasad, learned counsel for the petitioner and Mr.I.C.Vasudevan, learned counsel for the respondent and perused the entire materials available on record.

10.The Learned Counsel for the revision petitioner would submit that the absence of the revision petitioner is neither wanton nor willful and the petitioner was following the suit vigilantly till it was pending before the Learned District Judge of Namakkal.

11.It is his further contention that thereafter the suit was transferred before the trial Court and the revision petitioner due to his illness was unable to follow the suit. Accordingly he prayed to condone the delay in filing the set aside application.

12.Per contra, the learned counsel for the respondent would submit that the delay projected by the revision petitioner is untrue and the same cannot be accepted and also there was no evidence to substantiate the Revision petitioner's case.

13.On hearing upon rival submissions and perusing records, it is seen that the revision petitioner was conducting the suit till it was transferred to the Trial Court and again it is seen that the pleadings were completed and the revision petitioner has filed written statement disputing the respondent's claim.

14.It is the case of the revision petitioner / defendant that the

suit property remained sold by him with the concurrence of the respondent and he merely acted as General power of attorney entrusted on this behalf to sell the property.

15.It is revision petitioner's case that the property was sold by the respondent through him and proper account was furnished and the entire sale consideration was paid to the respondent /plaintiff.

16.On appraisal of the pleadings of either side, it is further seen that there are numerous transaction made between them on various dates. Therefore the trial Court ought to have condoned the delay by taking a lenient view.

17.Therefore, in the interest of justice, I am of the considered opinion that only a contested Decree will render substantial justice. Therefore the case on hand deserves to be approached in a pragmatic manner in view of the Principal - Agent relation between parties.

18.No doubt that an Ex-Parte decree will greatly prejudice the interest of the defendant in the above facts and circumstances involved in the case.

19. Accordingly, this civil revision petition is liable to be allowed however in terms of cost.

20. In the result:

(a) this Civil Revision Petition is allowed and the impugned order and decree dated 13.09.2012 made in I.A.No.39 of 2012 in O.S.No.183 of 2010 on the file of the learned Subordinate Judge, Tiruchengode, is set aside, on condition that the revision petitioner is directed to pay a sum of Rs.5000/- as cost to the respondent within a period of three weeks from the date of receipt of a copy of this order, failing which this Civil Revision Petition will stand dismissed automatically without any further reference. It is made clear that this Court has not expressed any opinion, any merits or demerits of the case and the trial Court is directed to dispose of the suit uninfluenced by any of the observation made in this civil revision petition;

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(b) On payment of cost as directed above, the trial Court is directed to number the set aside application and pass orders thereon within a period of two weeks and

thereafter the Trial Court is further directed to dispose of suit within a period of three months thereon.

Consequently, connected miscellaneous petition is closed.

13.02.2017

vs

Note: Issue order copy on 29.01.2019

Index: Yes

Internet: Yes

To

The Subordinate Judge, Tiruchengode.



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M.V.MURALIDARAN,J.

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