

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4805 of 2012
& M.P.No.1 of 2012

M/s.Universal Exports
Prop.S.Mariappan

.. Petitioner

Vs.

1. Syndicate Bank,
Rep. By its Senior Manager,
Chennai Main Branch,
No.69, Armenian Street,
Chennai 600 001.

2. M/s.S.V.Enterprises,
Prop. S.Vaidyanathan

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 CPC, against the order dated 02.11.2012 made in I.A.No.10014 of 2012 in O.S.No.5493 of 2002 on the file of the II Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.K.Harishankar
For Respondent : Mr.V.Suthakar (for R1)
: Batta due (for R2)

ORDER

This Civil Revision Petition has been filed against order dated 02.11.2012 made in I.A.No.10014 of 2012 in O.S.No.5493 of 2002 on the file of the II Additional Judge, City Civil Court, Chennai.

2. The petitioner is the second defendant, first respondent is the plaintiff and second respondent is the first defendant in O.S.No.5493 of 2012 on the file of II Additional Judge, City Civil Court, Chennai. The first respondent filed the above said suit for recovery of money against the second respondent and petitioner. The ex-parte decree was passed on 03.06.2003. The petitioner filed I.A.No.10014 of 2012 in condoning the delay of 3291 days in filing the application to set aside the ex-parte decree dated 03.06.2003.

3. According to the petitioner, the suit summons were not served on him. He was frequently travelling out of India and he has shifted his residence from Alwarpet to Virugambakkam, in the year 2008. He came to know about the ex-parte decree only when he received notices in O.A.No.38 of 2012, which was filed to execute the ex-parte decree, dated 03.06.2003 in O.S.No.5493 of 2002 on the file of the Debt Recovery Tribunal II, Chennai. The petitioner

appeared before the Debt Recovery Tribunal II, Chennai and obtained documents from the counsel for the first respondent and he verified Court records through his advocate and came to know about the ex-parte decree. Hence, he filed the said application.

4. The first respondent filed counter and denied various averments made by the petitioner. He submitted that only after completion of service of suit summons the decree was passed. The petitioner has not furnished any details about his travel to foreign countries and about the shifting of his residence from Alwarpet to Virugambakkam and he has not filed any documents to prove that the suit summons were not served to him.

5. The learned II Additional Judge, City Civil Court, Chennai has dismissed the application holding that the petitioner has not proved that the suit summons were not served on him and has not given any valid reason to condone the delay and accrued right to the first respondent cannot be set aside by allowing the application.

6. Against the said order dated 02.11.2012 in I.A.No.10014 of 2012 in O.S.No.5493 of 2002 on the file of the II Additional Judge, City Civil Court, Chennai, the present Civil Revision Petition is filed.

7. The learned counsel appearing for the petitioner submitted that the specific case of the petitioner is that no summons were served on him. The learned Judge erred in holding that the petitioner has not proved that summons were not served on him. The learned Judge failed to see that in view of the nature of business carried out by the petitioner, he was travelling frequently out of India and also shifted his residence from Alwarpet to Virugambakkam. The learned Judge erred in holding that suit summons were served on the petitioners at the address given in the plaint. The learned Judge came to the conclusion without verifying the Court records, that the petitioner has not given valid reasons for condonation of delay. The learned Judge dismissed the application without properly appreciating all the facts of the case and reasons given by the petitioner. The learned counsel for the petitioner relied on a judgment of this Court reported in 2007 (3) LW 1027 (Doss and another Vs. Vamanan and another), and the relevant paragraph of the same reads as follows:

"15. The above decisions make it very clear that if the process server makes an endorsement to the effect that the defendants refused to receive the summons, it is incumbent on the part of the trial Court

to direct the process server to file an affidavit and examine him on oath”

The learned counsel for the petitioner also relied on a judgment of a Division Bench of this Court reported in 2007 (3) LW 481 (Arun Alexander Lakshman and another Vs. A.P.Vedavalli) and the relevant paragraph of the same reads as follows:

"18. Court has to see whether sufficient cause is shown for the delay. What is or what is not 'sufficient cause' would depend upon varied and special circumstances of each case. To decide whether sufficient cause is shown or not, it is very undesirable to act upon precedents as every Judge has to deal with particular facts of each case."

8. Per contra, the learned counsel appearing for the 1st respondent submitted that only after completion of service of suit notice on the petitioner, ex-parte decree was passed. The reason given by the petitioner to condone such huge delay of 3291 days is not valid. The learned Judge considered all the facts in proper perspective and dismissed the application by giving valid reason. The learned counsel appearing for the first respondent relied upon a judgment of the Supreme Court reported in 2010 (8) SCC 685

(Balwant Singh (Dead) Vs. Jagdish singh and others) and prayed for dismissal of the Civil Revision Petition and the relevant portion of the said decision reads as follows:

"16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which as to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the application acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay

in the filing of such applications.”

9. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent and perused the materials available on record.

10. From the materials on record, it is seen that the petitioner has come up with the application to condone the delay of 3291 days on the ground that the suit summons were not served on him. The learned Judge, without verifying the Court records in the suit, has held that the suit summons would have been served on the petitioner in the address given in the plaint. This conclusion is based on assumption and presumption and not based on facts. Thus, the learned Judge failed to verify the records to find out as to whether the contention of the counsel for the petitioner that summons were not served, is correct. It is also pertinent to note that the first respondent has filed O.A.No.38 of 2012 on the file of the Debt Recovery Tribunal II, Chennai to execute the decree after nine years.

11. It is well settled that the length of delay is not a criteria,

but the intention of the party must be bona-fide and it should not be mala-fide and that the party must be given an opportunity to put-forth his case on the merits of the matter to find out as to whether the petitioner has made out a case for condoning the delay.

12. Considering the above facts, I hold that the petitioner has made out a case for condoning the delay and the learned Judge has not properly appreciated the facts and committed an irregularity in dismissing the application to condone the delay. In the above circumstances, the judgment relied on by the learned counsel for the first respondent is not applicable to the facts of the present case. For the foregoing reasons, the impugned order of the learned Judge is set aside and I.A.No.10014 of 2012 is allowed. Consequently, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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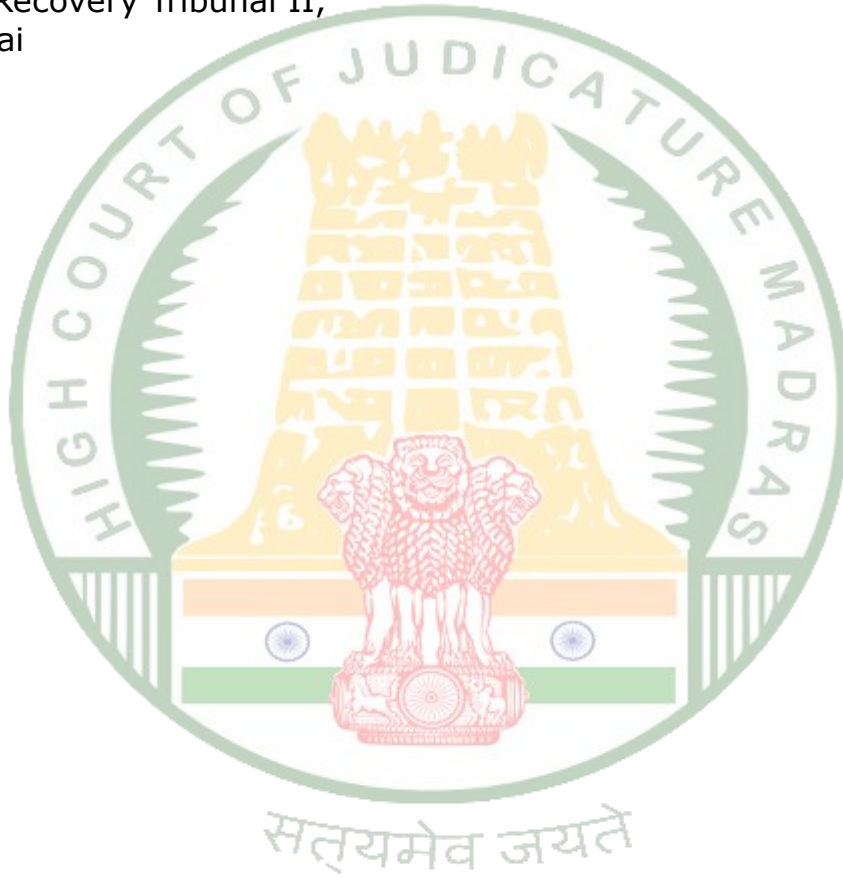
Speaking Order/Non-speaking Order

Index :Yes/No

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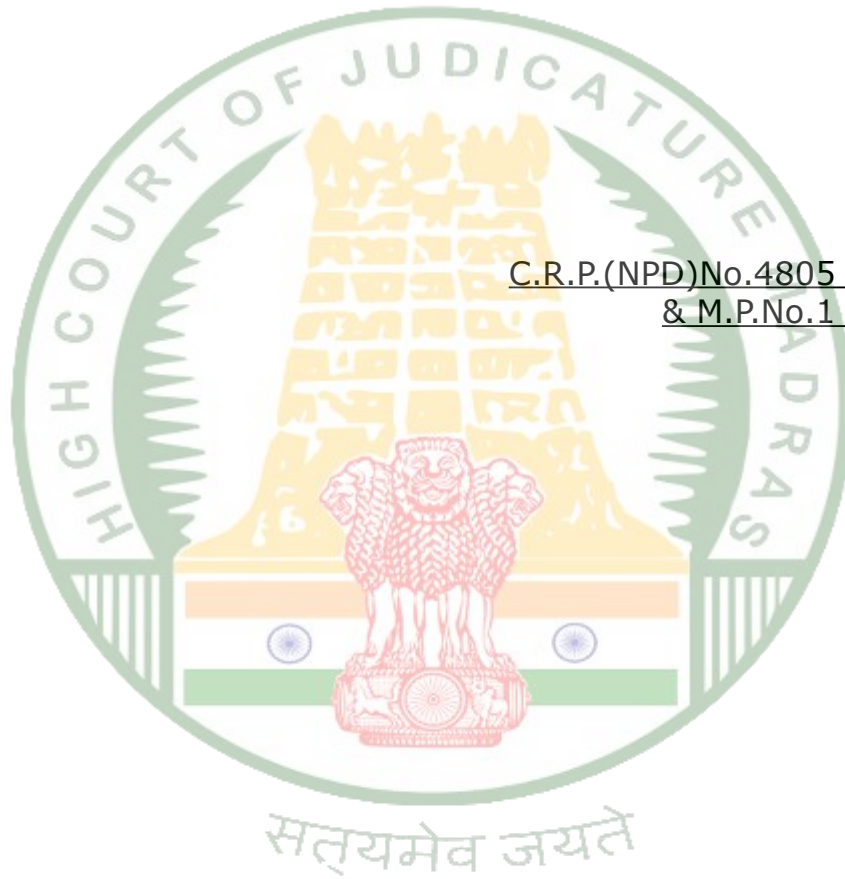
1. The II Additional Judge,
City Civil Court, Chennai
2. Debt Recovery Tribunal II,
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V.M.VELUMANI, J.

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