



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.162 of 2017 and
CMP(MD).No.675 of 2017

Karupan : Petitioner/Petitioner/Respondent

Vs.

Pathumani : Respondent/Respondent/Petitioner

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to direct the Motor Accidents Claims Tribunal / Additional Subordinate Judge, Karur to take on file the SR.No.5607 of 2016 and consider it for condoning the delay of 611 days in filing the petition to set aside the ex parte award dated 01.07.2014 in MCOP.No.158 of 2012 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Karur.

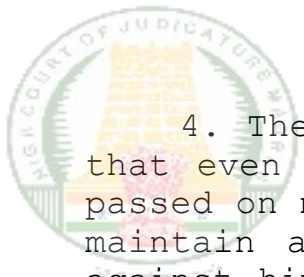
For Petitioner : Mr.S.Jayavel

O R D E R

This Civil Revision Petition is filed to direct the Motor Accidents Claims Tribunal / Additional Subordinate Judge, Karur to take on file the SR.No.5607 of 2016 and consider it for condoning the delay of 611 days in filing the petition to set aside the ex parte award dated 01.07.2014 in MCOP.No.158 of 2012 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Karur.

2. The petitioner is the first respondent in MCOP.No.158 of 2012. After notice he did not appear and was set ex parte. The second respondent in MCOP contested and award was passed on 01.07.2014. On coming to know of the award, the petitioner filed the application to condone the delay of 611 days in filing a petition to set aside the ex parte award. The learned Judge returned the said application on the ground that the award was passed on merits, after full pledged trial and the petitioner was called upon to explain how the petition is maintainable.

3. Against that return, the present Civil Revision Petition



4. The learned counsel appearing for the petitioner submitted that even if some of the respondents contested MCOP and award is passed on merits, other respondents who have been set ex parte can maintain an application to set aside the ex parte award passed against him. In support of his contention, he has relied on the Judgment reported in **CDJ 2011 MHC 5726 (P.Gunakumar Vs. R. Jayasingh and another)**, wherein para no.8 it has been held as follows:-

"In this connection, Mr.M. Thirunavukkarasu, the learned counsel for the appellant has placed reliance in Venktatalakshmi @ Rathnamma Vs. Bayamma and 12 others, (2003(1) CTC 603). In this case, one of the defendants, who suffered ex parte decree filed application to set aside the same on the ground that he was minor when the suit was filed and was not aware of the ex parte decree. This was considered by this Court and while explaining the scope and application of Order 9 Rule 13, V. Kanagaraj, J., has held that decision of suit on merits against co-defendants does not bar another defendant who has been set ex parte in suit from invoking Order 9, Rule 13. Hence, the petition was set aside and held to be maintainable. On considering the above cited decision, this Court is also made up its mind to allow this appeal, as it deems to be deserved, after setting aside the order of dismissal in I.A.No.809 of 2010 in MCOP.No.7 of 2007."

5. The ratio in the above Judgment is squarely applicable to the facts of the present case. Applying the said Judgment, I hold that the petitioner is entitled to maintain an application to set aside the ex parte award passed against him.

6. In the circumstances, if the petitioner represents the application, the learned Judge is directed to number the same if it is otherwise in order and consider the same on merits and in accordance with law.

7. With the above direction, the Civil Revision petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-

Assistant Registrar(co)

/True copy/

Sub Assistant Registrar



To
The Motor Accidents Claims Tribunal
(Additional Subordinate Judge), Karur.

+1cc to Mr.S.Jayavel, Advocate SR.No.4626/17

trp

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