



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.1623 of 2017

M.S.Muthusankar

... Petitioner

Vs.

K.M.Murugesan

... Respondent

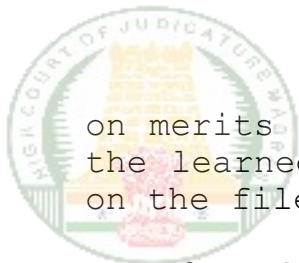
PRAYER: Civil Revision Petition is filed, under Section 115 of CPC against the petition to set aside the order dated 10.07.2015 passed in I.A.No.136 of 2013 in O.S.No.2 of 2008 on the file of the learned Subordinate Judge, Sivakasi.

For Petitioner	:	Mr.P.Sivasubramanian
For Respondent	:	No appearance

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.136 of 2013 in O.S.No.2 of 2008, on the file of the learned Subordinate Judge, Sivakasi, dismissing the application to condone the delay of 1736 days in filing the petition to set aside the ex parte order.

2. The learned counsel appearing for the petitioner would submit that the learned Judge failed to note that the revision petitioner could not attend the Court because of his illness Jaundice, in spite of that the petitioner did not know about the petition filed by him to condone the delay in filing the petition to set aside the ex parte decree passed in I.A.No.136 of 2013. He would further submit that the earlier counsel, who has appeared for the petitioner reported "no instructions" and the same was not informed to the petitioner by the said counsel and that the revision petitioner was at the impression that his case is pending and his counsel is following the case proceeding. He further contended that the revision petitioner came to know about the disposal of the suit and the petition to condone the delay in filing the petition to set ex parte decree filed in I.A.No.136 of 2013, only when the summons in the Execution Proceedings was served on him from the Court of I. Additional Subordinate Judge, Madurai. He further contended that the learned Judge failed to consider the execution of a pro-note itself is under dispute and hence, the suit itself has to be decided



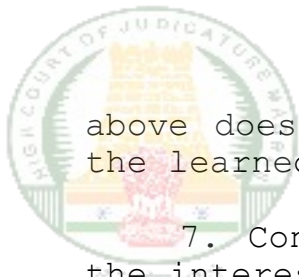
on merits and hence, he prays for setting aside the order passed by the learned Judge in I.A.No.136 of 2013 in O.S.No.2 of 2008 pending on the file of the learned Subordinate Judge, Sivakasi.

3. The learned counsel appearing for the petitioner also contended that the earlier application filed in I.A.No.125 of 2008 to set aside the ex parte order passed in O.S.No.2 of 2008 was allowed on payment of cost of Rs.5,000/- and the cost was paid and on payment of cost, ex-parte order was set aside and the suit was restored. Subsequently, it is admitted that when the suit was posted for hearing on 22.09.2008, the counsel for the petitioner reported "no instructions" and therefore, the petitioner said to be set ex parte in the said suit.

4. A perusal of the records would show that the learned Judge has dismissed the application filed by the petitioner in I.A.No.136 of 2013 in O.S.No.2 of 2008 to condone the delay of 1736 days in filing the petition to set aside the ex parte order. The order of the learned Judge has stated that the petitioner filed I.A.No.125 of 2008 to set aside the ex parte order passed in O.S.No.2 of 2008 and the same was allowed on payment of cost and that the petitioner failed to pay the amount the said application was dismissed. Thereafter, the petitioner has filed another Interlocutory Application to condone the delay of 921 days in dismissing the application in I.A.No.125 of 2008. The said contention raised before the Court below was disputed by the learned counsel for the petitioner that there was no such Interlocutory Application is filed and records also does not show any Interlocutory Application filed.

5. Though notice was served on the respondent, he has not appeared either in person or through his counsel and therefore, it was adjourned for orders today. Today also there is no representation on behalf of the respondent. Hence, the matter was proceeded with the submission of the learned counsel appearing for the petitioner as well as the documents produced before this Court.

6. From the perusal of the records as rightly contended by the learned counsel appearing for the petitioner I.A.No.125 of 2018 has been filed to set aside the ex parte order, which was filed in time and that said petition was allowed in terms and the petitioner has also paid the amount and that the petition was restored on file. But, as far as the petition filed for condoning the delay of 921 days in dismissing the application in I.A.No.125 of 2008 is denied by the learned counsel appearing for the petitioner and there is no records available in the petition. It is admitted case of the respondent that the petitioner's counsel reported "no instructions" and that the proceedings of the case has not been intimated to the petitioner for the reason best known to him. The learned counsel appearing for the petitioner also would submit that due to Jaundice, the petitioner went to Kerala to take treatment and a perusal of the records would show that the petitioner really did not know about the dismissal of the above suit and the reason stated



above does not disclose any attitude of the petitioner as found by the learned Judge, for coming to the decision.

7. Considering the facts and circumstances of the case and in the interest of justice, it is my considered opinion that the order passed by the learned Judge needs interference and therefore, the order dated 10.07.2015 passed in I.A.No.136 of 2013 in O.S.No.2 of 2008, on the file of the learned Subordinate Judge, Sivakasi is hereby set aside. Accordingly, the Civil Revision Petition is allowed. No costs.

8. Since the suit is of the year 2008, the learned Subordinate Judge, Sivakasi, is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge, Sivakasi.

TRP
TE/SV-MMS/SAR-1 : 08/01/2018 : 3P/2C

C.R.P (MD) No.1623 of 2017
21.11.2017