

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (NPD) No.46 of 2018
and
C.M.P.No.154 of 2018

S.Ramani

... Petitioner

..Vs..

M.Kirubanandam

... Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decretal order dated 13.10.2017 in I.A.No.66 of 2017 in O.S.No.97 of 2013 on the file of the Principal Subordinate Judge, Salem.

For petitioner : Mr.J.Sudhakaran
For Respondent : Mr.S.Kalyanaraman

ORDER

Challenging the fair and decretal order dated 13.10.2017 in I.A.No. 66 of 2017 in O.S.No. 97 of 2013 on the file of the Principal Subordinate Judge, Salem, the present Civil Revision Petition has been filed.

2. According to the petitioner, she filed the suit in O.S.No.97 of 2013 praying for issuance of permanent injunction and mandatory injunction against the respondent and another. In the aforesaid suit, the respondent, who is the first defendant in the suit, has filed a written statement. Thereafter, the

respondent/first defendant did not appear before the trial court which led to the passing of an ex parte decree on 08.04.2015. Thereafter, the first defendant/respondent herein has filed I.A. No. 66 of 2017 to condone the delay of 588 days in filing an application to set aside the ex parte decree passed on 08.04.2015. The Court below, without taking note of the length of the delay and the reasons assigned for the delay, has mechanically allowed the application for condoning the delay on 13.10.2017 with costs of Rs.1,000/-. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel for the revision petitioner would vehemently contend that the reasons assigned by the first defendant/respondent herein for condoning the inordinate delay of 588 days has not been properly explained. The Court below failed to take note of the fact that even on 29.11.2013, the first defendant/respondent herein has filed his written statement and thereafter, wantonly, led the suit to be decreed ex-parte. When the first defendant/respondent engaged a counsel to defend the suit, he ought to have been vigilant and contested the suit through such an advocate. However, in this case, the first defendant/ respondent simply blamed the counsel engaged by him for his non-appearance. In any event, the Court below ought not to have condoned the huge delay of 588 days in filing an application for setting aside the ex parte decree in the absence of any justifiable reasons on the part of the first defendant/ respondent. The learned counsel for the revision petitioner therefore, prays for setting aside the order passed by the Court below.

4. Per contra, the learned counsel for the first defendant/respondent herein would contend that the revision petitioner/plaintiff and the first defendant/respondent herein are related to each other. The revision petitioner has already filed RCOP No. 49 of 2016 against the tenant of the first defendant/respondent herein by claiming that she is the owner of the property mentioned therein. When the first defendant/respondent herein came to know about the filing of RCOP No. 49 of 2016 through his tenant, he met him and only on going through the Petition in RCOP No. 49 of 2016, the first defendant/ respondent came to know about the exparte decree passed in the suit on 08.04.2015. Immediately, he contacted his counsel, who has stated that due to the non-appearance of the first defendant/respondent the suit was decreed exparte. The fact remains that the first defendant/ respondent was not informed by his counsel about the need to appear before the Court below. Further, the counsel for the first defendant/ respondent did not inform the first defendant/ respondent about the passing of the exparte decree immediately. The first defendant/ respondent herein has diligently contested the suit by filing written statement and due to non-intimation of the stage of the case, he could not appear before the Court below and ultimately, the exparte order dated 08.04.2015 was passed. The first defendant/ respondent also revoked the *Vakalat* given to his erstwhile counsel and engaged a new counsel to contest the suit. The court below, taking into account the aforesaid explanation offered by the first defendant/ respondent has rightly condoned the delay in filing the application to condone the delay and the same does not call for any interference by this Court.

5. Heard the rival submissions of the parties concerned and perused the materials placed on records. For non-appearance of the respondent herein, an exparte decree dated 08.04.2015 was passed against the respondent by the court below. The reasons for non-appearance of the respondent on 08.04.2015, as could be inferred from the affidavit filed in support of the I.A. No. 66 of 2017 is that the respondent came to know about the exparte order only through his tenant against whom the plaintiff has filed RCOP No. 49 of 2016. According to the respondent, only on going through the petitioner in RCOP No. 49 of 2016, he came to know about the exparte decree passed on 08.04.2015. Since his counsel did not intimate him about the stage of the case, he also revoked the vakalath given to him and through a new counsel he has filed the instant application in I.A. No. 66 of 2017 before the Court below to condone the delay of 588 days. Having regard to the above explanation offered by the respondent herein, the Court below, in order to render complete justice, has condoned the delay with costs of Rs.1,000/-.

6. It is well settled proposition of law that length of delay is not a criteria but the reasons assigned for condonation of delay alone will be the criteria. This was the proposition laid down by the Hon'ble Supreme Court in the decision rendered in **(Balakrishnan Vs. Krishnamurthy) 1991 (1) MLJ 114 (SC)**.

7. In the light of the judgement rendered by the Hon'ble Supreme Court in the case of Balakrishnan case mentioned supra, this Court is of the view that the respondent has assigned valid reasons for condoning the delay of 588 days and taking note of the same, the Court below has rightly condoned the delay in order to

render complete justice. At the same time, taking into consideration of the length of delay in filing the application and the resultant hardship caused to the revision petitioner, this Court is of the view that exemplary cost has to be imposed on the respondent herein. Accordingly, to meet the ends of justice, this Court is inclined to pass the following orders:

(i) The order passed by the Court below in I.A.No.66 of 2017 in O.S.No.97 of 2013 on the file of the Principal Sub Court, Salem is modified by imposing cost of Rs.10,000/- instead of Rs.1000/- imposed by the Court below, besides a sum of Rs.3000/- is directed to be paid by the respondent herein to the District Mediation Centre, Salem within a period of four weeks from the date of receipt of a copy of this order.

(ii) On instructions, both the parties indicated for early disposal of the case and the Principal Sub Judge, Salem is directed to dispose the suit in O.S.No.97 of 2013 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

8. Accordingly, this Civil Revision Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.03.2018

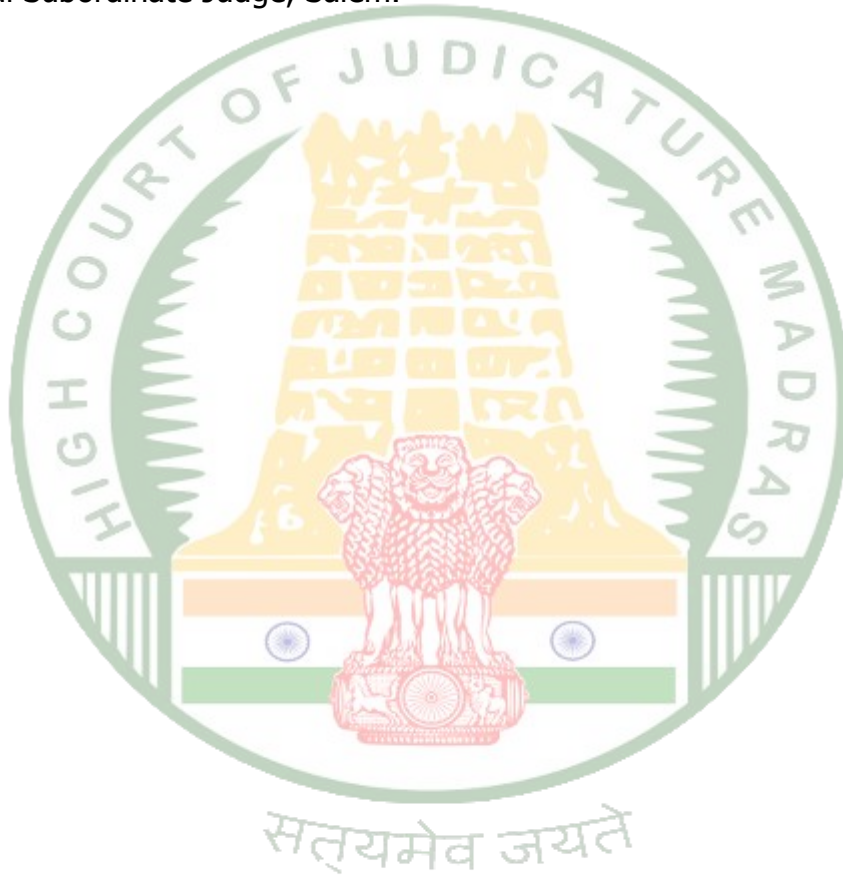
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Note to Registry:

<http://www.judis.nic.in>
Issue order copy on 22.06.2018

To

The Principal Subordinate Judge, Salem.



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D.KRISHNAKUMAR, J.,

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