

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 11TH DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A.No.4368 of 2018
in

C.S.No.366 of 2001

1. A.Rajpaul
residing at No.11, Prakash Avenue,
Perambur, Chennai-11.

2. G.Uthaman
residing at No.1/1972, Bye Pass Road,
Redhills, Chennai -52. ...Plaintiffs

vs

M.Jayapaul
residing at No.392, G.N.T.Road,
Redhills, Chennai - 52. ...Defendant

A.No. 4368 of 2018:

M.Jayapaul
S/o. C.K.Manikam,
No.392, G.N.T.Road,
Redhills, Chennai - 52. ...Applicant/Defendant

vs

1. A.Rajpaul
S/o. S.Alaguvel,
Door No.11, Prakash Avenue,
Perambur, Chennai-11.

2. G.Uthaman
S/o. Ganapathy
No.1/1972, Bye Pass Road,
Redhills, Chennai -52. .. Respondents/Plaintiffs

Application praying that this Hon'ble Court be
pleased to condone the delay of 3725 days in filing the
application to set-aside the ex-parte decree in C.S.No.366
of 2001 dated 29.01.2003 on the file of this Hon''ble
Court.

This application coming on this day before this court for hearing, the court made the following order:

In fact, this application was allowed by this Court by order dated 21.12.2018, on terms of payment of cost of Rs.10,000/- (Rupees Ten Thousand Only). When this matter came up for hearing today, the learned counsel appearing for the applicant would submit that, even though he offered the cost, the respondents side has refused to receive the same.

2. When this was questioned, Mr.M.Stalin, learned counsel appearing for the respondents/plaintiffs submits that, during earlier occasion i.e., on 21.12.2018, that the learned counsel represented him for the respondents/plaintiffs did not brought to the notice of this Court that, already the suit summon where, the applicant/defendant allegedly signed, has been referred to the Forensic Science Department to verify the signature along with the admitted signature, since the sole ground or reason given by the applicant/defendant in this application was that, no suit summons was served on him and the signature found in the suit summons was a forged one.

3. In that context, the learned counsel appearing for the respondents/plaintiffs would further submit that, in view of the referral made by this Court, the learned Advocate Commissioner already appointed, who has handed over the documents for said comparison to the Forensic

Science Laboratory, who, after having completed the task seems to have returned the documents and in this regard, the learned Advocate Commissioner has also filed a report. Therefore, the learned counsel appearing for the respondents/plaintiffs submitted that, unless the result of the Forensic Science Department, where the document i.e., suit summon has already been referred to verify the signature made in the said suit summon is made known to this Court in this application, allowing the same to condone the delay of 3725 days may not be justifiable.

4. After considering the said submissions made by the learned counsel appearing for the respondents/plaintiffs, I have verified the earlier orders which discloses that, the documents have already been referred to the Forensic Science Laboratory for examination and accordingly, it has been returned to this Registry. Therefore, the Registry was directed to place the document along with the result of the Forensic Science Department sent back by them, hence, the said documents with the report of the Forensic Science Department has been placed before this Court.

5. I have perused the said report dated 05.12.2018 which discloses that the signature, stamped and marked as A1 and A2 and B have all been written by one and the same person.

6. In view of the said report having been given by the Forensic Science Department, it become clear that the signature found in the suit summon of the year 2001, was that of the original defendant alone, as the said signature has been compared with the admitted signature of him by the Forensic Science Department and only thereafter, such report was given.

7. Therefore, the said report of the Forensic Science Department discloses the fact that the signature in the suit summon is of the defendant, hence, it can be easily ascertained that the suit summons duly have been served on him.

8. In this context, the averment made in Paragraph 5 and 6 of the affidavit filed in support of this application if looked into, the applicant/defendant has stated that, he had not received any summons from this Court for his appearance in the above suit and he further stated that, he had neither signed the summons nor it was served to any one of his family members. He has further averred in the affidavit that the signature appears in the summon is forged by the respondents. He has also averred that, from the date of knowledge and verification, he has filed the present application for setting aside the ex-parte decree passed against him.

9. Therefore, the one and only reason stated by the applicant/defendant in the application to condone the

delay of 3725 days was that, he had no knowledge about the suit having been instituted against him as no suit summons served on him and only after the notice in E.P.No.158 of 2012 has been served on him by the respondents/plaintiffs, he came to know that an ex-parte decree was passed on 29.01.2003. However, the said fact according to him, had been brought to the notice of him only in October 2012. Therefore, that was the first knowledge about the suit filed against him.

10. However, the fact remains that he has received the suit summons as early as in the year 2001 itself and inspite of the suit summons having been served on him he did not choose to appear. Therefore, the reasoning given in the affidavit filed in support of this application is totally a falsified statement, based on which, he cannot seek the indulgence of this Court to condone the delay of 3725 days. In the result, he cannot also seek for any indulgence of this Court to set aside the ex-parte decree dated 29.01.2003 made in the suit in C.S.No.336 of 2001.

11. However, these factors had not been properly projected by the junior counsel, who have represented the respondents/plaintiffs during the last hearing, that is why, this Court was inclined to accept the application and a conditional order of allowing the application was passed

on 21.12.2018.

12. Now, after having known these facts, which have been brought to the notice of this Court, by the learned counsel appearing for the respondents/plaintiffs and after having perused the report submitted by the Forensic Science Department, this Court is of the clear and firm view that the one and only reason adduced by the applicant/defendant in this application especially in Paragraph 5 and 6 of the affidavit filed in support of this application are no more good or valid reasons and in fact it is a false reason and therefore, the applicant/defendant is not entitled to get any relief in this application as he has not made out a case nor given any justifiable reason to condone the delay of 3725 days in filing the set aside petition.

13. Resultantly, this Court is inclined to recall the order passed in this application on 21.12.2018 and as a sequel, this application is liable to be dismissed. Accordingly, it is dismissed.

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Sd/R.S.K.J.

11.01.2019

//Certified to be a true copy//

Dated this the th day of 2019.

DL/25.01.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.