

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 5TH DAY OF JULY, 2018

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. No.2908 of 2018

in

C.S.233 of 2016

C.S.233 of 2016:

In the matter of :

CAPT.VINOD K.S.RAGHAVAN

S/o.T.Srinivasaraghavan,

No.1-A, Malles Anantya,

New No.1, Old No.2, Tanjore Street,

T.Nagar, Chennai-600 017.

(The Plaintiff previously was residing at

B-2, Gayathri Apartments,

No.56, Warren Road, Mylapore,

Chennai-600 004).

...Plaintiff

Verses

1.M/s.AVIVA LIFE INSURANCE COMPANY INDIA LTD,

Having its registered Office at the 2nd Floor,

Prakash Deep Building,

No.7, Tolstoy Marg,

New Delhi -110 001.

and having its Corporate Office at

Aviva Tower, Sector Road,

OPP.To Golf Course, DLF-Phase-V,

Sector-43, Gurgaon-122 003.

2 M/s.AVIVA LIFE INSURANCE COMPANY INDIA LTD,

Thorough its Branch Manager,

Anna Nagar West,

Chennai- 600 040.

...Defendants/Applicants

A. No.2681 of 2017:

In the matter of :

1.M/s.AVIVA LIFE INSURANCE COMPANY INDIA LTD,

Having its registered Office at the 2nd Floor,

Prakash Deep Building,

No.7, Tolstoy Marg,

New Delhi -110 001.

and having its Corporate Office at

Aviva Tower, Sector Road,

OPP.To Golf Course, DLF-Phase-V,
Sector-43, Gurgaon-122 003.

2 M/s.AVIVA LIFE INSURANCE COMPANY INDIA LTD,
Thorough its Branch Manager,
Anna Nagar West,
Chennai- 600 040.

...Applicants/Defendants

Vs.

CAPT.VINOD K.S.RAGHAVAN
S/o.T.Srinivasaraghavan,
No.1-A, Malles Anantya,
New No.1, Old No.2, Tanjore Street,
T.Nagar, Chennai-600 017.
(The Plaintiff previously was residing at
B-2, Gayathri Apartments,
No.56, Warren Road, Mylapore,
Chennai-600 004).

...Plaintiff/Respondent

Application praying that this Hon'ble Court be pleased
to Condone the delay of 353 days in filing the present
applicant against the judgment dated 07.03.2017 passed by this
Hon'ble Court.

This Application coming on this day before this court
for hearing and the court made the following order:

This application has been filed to condone the delay
of 353 days in filing the present application against the
exparte judgment and dated 07.03.2017 passed in C.S.No.233 of
2016.

2.The learned counsel for the respondent would submit
that as there was no appearance for the applicants, they were
set exparte and the exparte judgment and decree was passed on
07.03.2017.

3.The learned counsel appearing for the applicants
would submit that his lawyer has not diligently represented
the case which left to the causing of delay of 353 days. It

is to be noted that though it is settled law that "sufficient cause" must receive a liberal construction so as to advance substantial justice, there must be at least some reasonable explanation from the party who seeks to set aside the exparte decree.

4. On a perusal of the entire affidavit, except alleging that the counsel has not diligently represented no other reasons whatsoever is given. It is to be noted that mere handing over of the vakalat or case to the counsel will not end the duties of the litigant. It is the duty of the litigant to follow the proceedings and he cannot blame the counsel's inaction. When the petitioner is able to show that he has taken much efforts in following the proceedings and only the counsel has not conducted the case diligently then it can be said that there is some cause for condoning the delay. Absolutely there is no whisper made in the application with regard to the nature of steps being taken by him.

5. Hence, this Court do not find any merits for the condoning the delay of 353 days in setting aside the exparte judgment and decree of this Court passed as early as 07.03.2017. The strange arguments also made by the learned counsel appearing for the applicants that an exparte decree has been passed without application of the mind and it has to be set aside.

6. I am of the view that such contention cannot be countenanced for the simple reason. The Learned Judge taking into consideration of the pleadings, evidence of PW1 and Exhibits P1 to Ex.P9, after considering all those documents had passed an exparte judgment.

7. Therefore, I am of the view that the contention of the counsel on record has no basis. If at all he wants to challenge the decree and judgment, his remedy lies elsewhere.

He ought to have challenged the exparte decree in appeal.

8.The learned counsel for the applicants also submitted that the execution proceedings are pending and he has also paid Rs.13,96,590/- in execution proceedings. On 21.03.2018 by way of cheque and the same has also been encashed by the respondent. Since half of the decree amount has been paid, he claims that the exparte decree has to be set aside.

9.It is to be noted that any amount has been paid during the execution of petition, the same shall be adjusted towards the decree amount. Since he has paid some amount towards the decree amount in the execution petition, as a matter of right, he cannot seek to set aside the exparte decree. He has relied upon the judgment of the Division Bench of this Court reported in 2007-3-L.W.481 (Arun Alexander Lakshman, Proprietor and another Vs.A.P.Vedavalli). The Division Bench taking into consideration the nature of the decree namely decree for damages set aside the exparte decree passed in the above case.

10.Therefore, the above facts of the Division Bench cannot be applied mechanically to this case. Even paragraph 18 of the judgment of the Division Bench held the following:

"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".

delay of 353 days in filing the application to set aside the
exparte judgment and delay. Accordingly, this application is
dismissed.

Sd./- N.S.K.J

05.07.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

GJM/09.08.2018

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