

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION(NPD) No.2390 of 2016
and C.M.P.No.12340 of 2016

T.S.Venkatesan .. Petitioner

vs

P.Natarajan .. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 18.03.2016 passed in I.A.No.850 of 2015 in O.S.No.1557 of 2008 on the file of the District Munsif cum Judicial Magistrate at Sriperumbudur.

For Petitioner ... Mr.D.S.Ramesh

For Respondent ... Mr.S.B.Viswanathan

ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal order dated 18.03.2016 passed in I.A.No.850 of 2015 in O.S.No.1557 of 2008 on the file of the District Munsif cum Judicial Magistrate at Sriperumbudur.

2.The brief facts of the case are as follows:

(i)The petitioner/plaintiff filed a suit in O.S.No.1557 of 2008 for declaration and permanent injunction against the petitioner/3rd defendant and defendants 1 and 2 on the file of the learned District Munsif cum Judicial Magistrate, Sriperumbudur. In the aforesaid suit, the respondent/3rd defendant has not appeared before the Court below and hence he was set exparte and an exparte decree was passed on 07.10.2009. As against the said exparte decree, the respondent filed an application in I.A.No.850 of 2015 in O.S.No. 1557 of 2008 under Section 5 of the Limitation Act to condone the delay of 1950 days in filing the application to set aside the exparte judgment and decree dated 07.10.2009.

(ii)In the affidavit filed in support of the application, it is stated that the respondent was admitted in the Hospital and he was diagnosed with 'Subjective Cognitive Impairment' and 'Wernicke-Korsakoff Syndrome'. Due to the aforesaid decease, he has lost his memory and became immovable. Thereafter, he regained his memory and contacted his counsel. Therefore, there is a delay of 1950 days in filing the application to set aside the exparte decree dated 07.10.2009. Considering the averments made in the affidavit, the

Court below, allowed I.A.No.447 of 2015 by order dated 18.03.2016 on payment of cost.

3.The learned counsel for the petitioner/plaintiff submitted that the petitioner denied the reasons stated by the respondent in the affidavit for the inordinate delay in filing the said application. Moreover, the respondent has not produced any evidence before the Court below to prove that he was suffering from aforesaid disorder namely, 'Subjective Cognitive Impairment' and 'Wernicke-Korsakoff Syndrome' and lost his memory and other defects. Hence, the impugned order passed by the Court below is liable to be dismissed.

4.The learned counsel for the respondent/3rd defendant submitted that the Court below, after considering the reasons stated in the affidavit, rightly allowed the application. Hence, the Civil Revision Petition is liable to be dismissed.

5.Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

6. In the decision in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay.

7. Considering the facts of the case, submissions made by the learned counsel for both sides and on a perusal of the order passed by the Court below, it is seen that the respondent has not chosen to file any relevant material before the Court below to substantiate his contention raised in the affidavit. Therefore, in the interest of justice and in the light of the decision **cited supra**, the order passed in I.A.No.447 of 2015 is liable to be set aside and remanded to the Court below to decide afresh, by adducing necessary oral and documentary evidence. Hence, this Court is inclined to pass the following order:

"(i) The order dated 18.03.2016 passed in I.A.No.850 of 2015 in O.S.No.1557 of 2008 is set aside and the same is remanded back to the District Munsif cum Judicial Magistrate, Srimperumbudur to consider afresh.

(ii)The District Munsif cum Judicial Magistrate, Srimperumbudur is directed to dispose of I.A.No. 850 of 2015 on merits and in accordance with law after giving due opportunities to both sides as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order.

(iii)Both the parties are directed to co-operate with the trial.

(iv)The Civil Revision Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed. "

सत्यमेव जयते

16.03.2018

Index: Yes/No.

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To

The District Munsif cum Judicial Magistrate,
Srimperumbudur.

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D.KRISHNAKUMAR,J.

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**C.R.P.(NPD)No.2390 of 2016
and C.M.P.No.12340 of 2016**

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