

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 26.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No.3611 of 2016

and

CMP No.18363 of 2016

B.Basuvan

...

Petitioner

Versus

D. Mathews Samuel

...

Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code that the order and decreetal order in I.A. No.760 of 2016 in O.S. No.149 of 2014 on the file of the Sub-Ordinate Judge of the Nilgiris at Udhagamandalam, dated 15.09.2016 is manifestly erroneous, illegal and unjust and in the event liable to be set aside.

For Petitioner : Mr.D.J.Venkatesan

For Respondent : Dr. R. Gowri

ORDER

सत्यमेव जयते

The present Civil Revision is filed against an order passed in 15.09.2016 passed in I.A. No.760 of 2016 in O.S. No.149 of 2014 on the file of the Sub-Ordinate Judge of the Nilgiris at Udhagamandalam, dated 15.09.2016

2. According to the learned counsel for the revision petitioner, the respondent has filed the suit in O.S. No.149 of 2014 for recovery of

money for a sum Rs.2,57,272/-, (Rs.1,50,000/- being the Principal amount) with interest. The aforesaid suit was set ex-parte and an ex-parte decree was passed on 21.07.2015. Thereafter, the respondent has filed an execution petition in which summons were sent to the revision petitioner/Judgment Debtor. On notice, the revision petitioner/Judgment debtor filed the present application to condone the delay of 190 days in filing an application for setting aside the ex-parte decree. In support of the aforesaid application, the petitioner has filed an affidavit stating the reasons that he was working as a Clerk in Bank of Baroda and because of promotion to the post of Head Cashier and consequential transfer of his employment on 18.01.2012 and due to heavy work in the transferred place, he could not appear before the Court below and to contest the suit. Thus, according to the revision petitioner, the delay in filing the application to set aside the ex-parte decree is due to a bonafide reason and reasons beyond his control. It was also stated that if the delay is condoned, no prejudice would be caused to the respondent/plaintiff. In spite of the same, the Court below has erroneously dismissed the application.

3. Per contra, the learned counsel for the respondent would submit that the suit was filed in the year 2014 and ex-parte decree was passed in the year 2015. After filing the execution petition, the present

application has been filed with a petition (i) to condone the delay in filing an application to set aside the ex parte decree and (ii) to set aside the ex parte decree. The reasons assigned in the application are not convincing and the application has been filed only to drag on the suit. There is no bonafide in the application filed by the revision petitioner in filing the present application and therefore, the respondent/plaintiff prayed for dismissal of the application.

4. Admittedly, the suit was filed for recovery of money based on promissory note, dated 24.10.2011. The suit was instituted in the year 2014. According to the defendant-revision petitioner due to transfer of his employment and owing to heavy work load, he could not contest the suit. With the result, the suit was decreed ex-parte. According to the revision petitioner / defendant, he was under the impression, the suit was pending. However, on receipt of notice in the execution petition, he came to know about the ex-parte decree passed by the defendant along with the application seeking to condone the delay in filing 190 days with an application to set aside the ex-parte decree. He has also filed the written statement repudiating, each and every averments made in the plaint. It is seen from the record, that there was a delay of 190 days in filing an application to condone the delay in filing the application to set aside the ex-parte decree. The suit was filed for recovery of a sum of

Rs.1,50,000/- with interest, on the basis of promissory note. The suit was instituted in the year 2014.

5. Taking note of the above, and by following judgment in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649***, the Hon'ble Supreme Court has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice, this Court is of the view that the delay was satisfactorily explained by the revision petitioner-defendant and he has to be give an opportunity to contest the suit on merits.

6. Therefore, in the light of the aforesaid facts, this Court has no hesitation to set aside the I.A. No.760 of 2016. Accordingly, I.A. No.760 of 2016 in O.S. No.149 of 2014 on the file of Sub Court, Udhagamandalam is set aside and the Civil Revision is allowed with a direction to the Sub Court, Udhagamandalam to dispose of the said suit, as expeditiously as possible, preferably within six months from the date of receipt of a copy of the order, on condition an amount of Rs.5,000/- is imposed as costs, payable to the respondent within a period of two weeks

from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also closed.

26.03.2018

Index : Yes/No
Internet : Yes / No
Speaking/Non Speaking
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To
The Sub-Ordinate Judge of the Nilgris at Udhagamandalam



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D.KRISHNAKUMAR, J.

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