



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Fourth day of April Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Dr.Justice S.VIMALA
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CMP(MD) No.6566 of 2017
IN
AS(MD) No.SR27805 of 2017

N.MOHAN

... PETITIONER/APPELLANT

Vs

R.MADHU

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 546 days in filing of the First Appeal before this Honble Court and thus render justice.

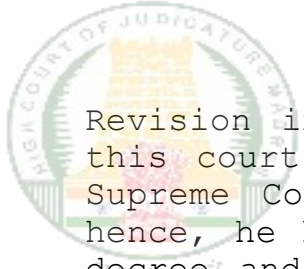
PRAYER IN AS(MD) No.SR27805 of 2017

To prefer the following memorandum of grounds of First Appeal as against the decree and judgment of the III Additional District Court, Tiruchirappalli in O.S.No.76 of 2015 dated 09.10.2015.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.SINGAN, Advocate for the petitioner, the court made the following order:-

This Civil Miscellaneous Petition has been filed by the petitioner to condone the delay of 546 days in filing the appeal suit.

2.The petitioner states that he had his residences one at Chennai and another at Trichy and in the suit filed in O.S.No.76 of 2015 on the file of the III Additional District Court, Trichy, against the petitioner, the summon was not properly served on him and thereafter, an ex-parte decree was passed against him on 09.10.2015 and against which, he filed petition to set aside the ex-parte decree along with condone delay application before the trial court, which was dismissed on 04.01.2017 and hence, he filed Civil



Revision in CRP(NPD)No.257 of 2007, which was also dismissed by this court and against which, he preferred SLP before the Hon'ble Supreme Court and that was also dismissed by the Apex Court and hence, he has chosen to file this petition as against the ex-parte decree and therefore, the delay in filing the appeal suit may be condoned.

3.The learned counsel for the petitioner submitted that when sufficient reasons are given, the delay can be condoned and in support of his contention, he has relied upon the following judgments:-

01.AIR 1988 CALCUTTA 28 (*Sipra Dey vs. Ajit Kumar Dey*);

02.AIR 1979 DELHI 26 (*Nirmala Chaudhary vs. Bisheshar Lal*);

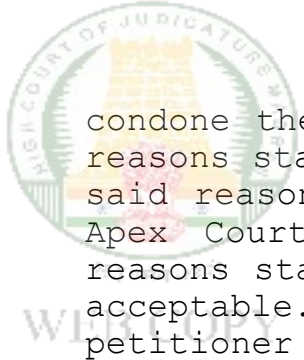
03.AIR 1971 KERALA 211 (V 58 C 44) (*State vs. Kirishna Kurup*)

4.On the other hand, it is argued on the side of the respondent that the petitioner knowing fully well of the ex-parte decree, with an intention to drag on the proceedings, had filed the petition to set aside the ex-parte decree and it was dismissed by the trial court and the same was also confirmed by this court as well as the Apex Court and the petitioner has not given sufficient reasons for the condonation of delay and the petitioner by giving the same reasons for condonation of delay, which were not accepted by the Apex court, filed the present petition and the petitioner is taking contrary stand and are making false statements in respect of reasons for delay in preferring the application to set aside the ex-parte decree and prays that the Civil Miscellaneous Petition may be dismissed.

5.Heard both sides and perused the materials available on record.

6.It is seen from the records that the respondent had filed a suit in O.S.No.76 of 2015 for recovery of money as against the petitioner/appellant. In the said suit, the petitioner was called absent and set ex-parte. The petitioner filed petition to set aside the ex-parte decree and it was dismissed by the trial court. Then, the petitioner preferred Civil Revision Petition before this court and the same was also dismissed. Afterwards, the petitioner filed SLP before the Hon'ble Supreme Court, which was also dismissed. Hence, the petitioner filed the present petition to condone the delay of 546 days in filing the first appeal before this court.

7.In the present petition also, the petitioner stated the same reasons stated in the petition to set aside the ex-parte decree. The reasons stated by the petitioner was not accepted by the trial court as well as the Apex Court. The petitioner has not chosen to file the first appeal in time. But he has filed the present petition to



condone the delay in filing the appeal suit, by narrating the same reasons stated in the petition to set aside the ex-parte decree. The said reasons stated by the petitioner was also not accepted by the Apex Court. Hence, this court come to the conclusion that the reasons stated in this petition are not sufficient and they are not acceptable. Tthe rulings cited by the learned counsel for the petitioner are not applicable to the facts of this case.

8.In the result, this Civil Miscellaneous Petition is **dismissed**.

sd/-
24/04/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE III ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI.

+1. C.C. to M/S.V.SINGAN, Advocate SR.No.63260

ORDER
IN
CMP (MD) No.6566 of 2017
IN
AS (MD) No.SR27805 of 2017
Date :24/04/2018

SDS/CM/VK/09.05.2018 : 2P/3C