



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2018

CORAM

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARANC.R.P.(NPD) (MD) No.225 of 2018
and C.M.P.(MD) No.930 of 2018

Amoor Bose @ Ravi

... Petitioner/Petitioner/Defendant

-vs-

S.V.RM.RM.Sevugan Chettiar

... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code praying to set aside the fair and decreetal order dated 02.01.2018 passed in I.A.No.174 of 2017 in O.S.No.82 of 2008 on the file of the learned District Munsif Court, Madurai Taluk, Madurai and allow the present Civil Revision Petition.

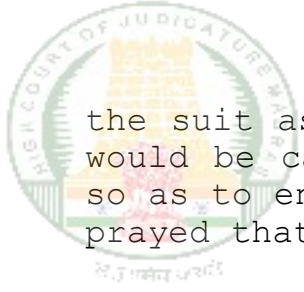
For Petitioner : Mr.A.Saravanan

For Respondent : No Appearance

O R D E R

The revision petitioner is the defendant in O.S.No.82 of 2008 on the file of the learned District Munsif Court, Madurai Taluk, Madurai and in the suit, the plaintiff sought for the relief of declaration among various other reliefs. In the suit, an exparte order was passed against the defendant on 18.11.2014 on account of his non appearance. Therefore, the revision petitioner/defendant filed an application in I.A.No.174 of 2017 for condoning the delay of 775 days in filing petition for setting aside the said exparte order and the said application came to be dismissed by the Trial Court, on the ground that no proper reasons were assigned for the delay. Aggrieved by such dismissal, the revision petitioner is before this Court.

2. It is the case of the revision petitioner that his actual name is Ravi and his name has been purposely mentioned as Amoor Bose @ Ravi in the suit. He has not received any notice or summon regarding hearing of the suit on account of non mentioning of the correct address and name and the plaintiff, in order to create an atmosphere as if the defendant is not interested to prosecute the case, has added the defendant to the suit with the wrong name. It is the further case of the revision petitioner that he is a Government employee and he has not been called by any other pseudonym. When the revision petitioner received a notice in respect of proceedings in E.P.No.8 of 2016 in O.S.No.82 of 2008, the factum of dismissal of



the suit as against him came to light. Contending that no prejudice would be caused to other side, in the event of condoning the delay so as to enable the petitioner to challenge the exparte order, it is prayed that the order of the Trial Court is liable to be set aside.

3. Heard the learned counsel for the petitioner. There is no representation for the respondent. This Court also perused the material documents available on record.

4. It is stated by the petitioner that he had filed an affidavit in support of the application filed for condonation of delay, before the Trial Court, explaining the reasons for the delay and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner. It is the submission of the respondent / plaintiff that the stand of the petitioner that he did not receive any notice and his name has not been correctly mentioned, is far from truth, as the private notice addressed to him in the very same name, was received by him on 11.01.2017.

5. It is appropriate to state here that as repeatedly held by this Court, in the matter of condonation of delay, a lenient view should be taken to condone the delay. This Court, on earlier occasion in the case of G.Krishnamoorthy vs., Arulmighu Sri Pataleeswarar Devasthanam, rep. by its Executive Officer, Cuddalore, reported in 2010 (1) MWN Civil 837, has clearly held that the petition for condonation of delay can be allowed, if it is proved that the party could not be able to contact the lawyer in respect of his/her case.

6. In the present case on hand, it has been repeatedly reiterated by the petitioner that on receipt of the notice in the Execution Proceedings, he came to know of the fact of dismissal of the suit against him through an Advocate and thereafter, he had taken steps to file a petition for setting aside the exparte order. In the meanwhile, a delay of 775 days had occurred, which is neither wanton nor wilful and the said ground is an acceptable one to consider the case of the petitioner. Accordingly, upon hearing the submissions of both sides and finding merits in contention raised by the petitioner, this Court is of the view that the order dated 02.01.2018 passed in I.A.No.174 of 2017 in O.S.No.82 of 2008 by the learned District Munsif, Madurai Taluk, Madurai, is liable to be set aside, but, of course, on payment of costs only.

7. In the result,

(a) this Civil Revision Petition is allowed and the order dated 02.01.2018 passed in I.A.No.174 of 2017 in O.S.No.82 of 2008 by the learned District Munsif, Madurai Taluk, Madurai, is hereby set aside on condition that the petitioner shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondent within a period of three weeks from the date of receipt of a copy of this order;



(b) the Trial Court, upon production of receipt in proof of payment of costs, is directed to number the application filed by the petitioner for setting aside the exparte order, issue notice to the concerned parties and pass appropriate orders thereon on merits and in accordance with law within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The District Munsif,
Madurai Taluk,
Madurai.

COPY TO:

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.A.Saravanan, Advocate SR.No. 67183

+1cc to M/S.Abisha, Advocate SR.No. 67534

C.R.P. (NPD) (MD) No.225 of 2018

07.06.2018

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JM/RP/SAR 3/24.07.2018/3P/6C