



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.03.2018
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.626 of 2018 (NPD)

WEB COPY

Santhanam .. Petitioner / Petitioner / Defendant

Vs.

Seventhan .. Respondent / Respondent / Plaintiff

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order, dated 15.09.2017, passed in I.A.No.370 of 2017 in O.S.No.192 of 2003 by the learned Principal District Munsif, Manapparai.

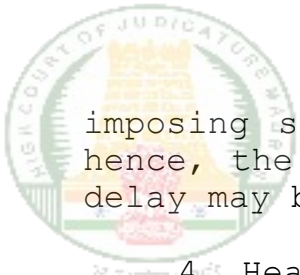
For Petitioner : Mr.S.Prasanth

ORDER

This civil revision petition has been filed by the revision petitioner/ defendant, as against the order, dismissing Section 5 petition for condoning the delay of 211 days in filing a petition for setting aside the ex parte decree.

2. The respondent herein / plaintiff has filed the suit in the year 2003 for permanent and mandatory injunctions. The learned counsel for the revision petitioner / defendant had reported no instructions before the Court below on 12.08.2014 and it was adjourned to 27.08.2014 and the revision petitioner / defendant was remained absent on that day and therefore, an ex parte decree came to be passed on 27.08.2014. For filing a petition to set aside the said ex parte decree, there was a delay of 211 days. In order to condone the same, he has filed Section 5 petition and the same was dismissed by the Court below holding that earlier the revision petitioner / defendant twice left the suit in ex parte and ex parte decrees were set aside by adopting liberal approach and even then, he is adopting the same tactics and he has also not assigned sufficient reason for condoning the same.

3. The learned counsel for the revision petitioner / defendant would submit that due to stomach pain, the revision petitioner was admitted in the hospital and therefore, he could not appear before the Court below on 27.08.2014 and the ex parte decree was passed. He would further submit that as the sufficient cause was made out by the revision petitioner for non appearance on the date fixed for hearing, he cannot be penalized for his previous negligence and the delay of 211 days ought to have been condoned by the Court even by



imposing some cost. But, the Court below has failed to do so and hence, the order impugned in this petition may be set aside and the delay may be condoned.

4. Heard the learned counsel for the petitioner and perused the records carefully.

5. The only reason assigned by the revision petitioner / defendant for condoning the huge delay of 211 days in filing a petition to set aside the ex parte decree is that due to stomach pain, he could not appear before the Court on 27.08.2014 and thereafter, due to ill-health, the delay of 211 days had occurred in filing a petition to set aside the ex parte decree. The above reason assigned by the revision petitioner / defendant is nothing but an old-fashioned reason and the same is also not sufficient enough to condone the huge delay of 211 days. In order to substantiate the same, the revision petitioner had not produced any document also.

6. It is seen from the record that the suit was filed in the year 2003 and the trial was commenced belatedly in the year 2010 and due to non appearance of the revision petitioner / defendant, twice ex parte decree was passed and the same was, subsequently, set aside by liberal approach. It would go to show that the revision petitioner / defendant was purposefully repeating his action. Therefore, this Court is of the view that the said approach cannot be repeatedly shown to a person who is purposefully repeating his action. No one can take advantage of his own wrongs. The Court below has rightly dismissed the application filed by the petitioner. There is no merit in this petition.

7. In view of the above, this civil revision petition is dismissed at the stage of admission itself. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Munsif,
Manapparai.

C.R.P. (MD) No. 626 of 2018 (NPD)
21.03.2018

GCG

<https://hcservices.ecourts.gov.in/hcservices/>
CM/SNK RSK/SAR 1/13.04.2018/2P/2C