



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.869 of 2018 and
C.M.P. (MD) No.3835 of 2018

G.Jeyachandra ... Petitioner/Petitioner/1st Defendant
-vs-

1. Dominic Bensigar ... 1st Respondent/
1st Respondent/Plaintiff

2. The Branch Manager
State Bank of Travancore,
Thiruvathancode Village,
Kalkulam Taluk,
Kanyakumari District. ... 2nd Respondent/
2nd respondent/2nd defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the Fair and decreetal order dated 28.11.2017 passed in I.A.No.165 of 2017 in O.S.No.320 of 2012 by the Sub Judge, Padmanabhapuram and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.S.Suresh

For Respondents : No Appearance

ORDER

The revision petitioner is the 1st defendant in O.S.No.320 of 2012 on the file of the Sub Court, Padmanabhapuram and the suit was filed by the plaintiff, seeking the relief of recovery of money. In the suit, an exparte order was passed against the 1st defendant on 19.12.2016 on account of his non appearance. Therefore, the revision petitioner/1st defendant has filed two applications in I.A.Nos.165 and 269 of 2017, both for condoning the delay of 287 days in filing petition for setting aside the said exparte order and also to set aside the order dated 19.12.2016. Both the applications 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 he had purchased a Mahindra Van on payment of ready cash since the plaintiff was in need of money, the 1st defendant pledged his vehicle



with the 2nd defendant for collateral security. On account of irregular payment by the plaintiff, the Bank had filed a suit in O.S.No.65 of 1993, in which the revision petitioner remained *ex parte*, taking into account the fact that the plaintiff was the actual borrower of money from the 2nd defendant. It is the further case of the revision petitioner that since the plaintiff had availed loan from the 2nd defendant, it is incumbent upon him to repay the amount, in which he has no role to pay and accordingly, he settled the amount with the 2nd defendant.

3. The revision petitioner states that subsequently, the plaintiff instituted a suit against him by incorporating false averments in it and the said suit was decreed in his favour and an *ex parte* order was passed. There was a delay occurred in filing a petition for setting aside the order, which was not entertained by the Trial Court on some flimsy reasons. The revision petitioner, in order to substantiate his argument that in the matter of *ex parte*, the Court should decide the matter only on merits, has relied upon the judgment of this Court in the case of **N.Maheswari vs. Mariappan and others**, reported in **2013 (2) CTC 388**, wherein it has been held as under:

"11....The Court cannot simply pass a judgment and decree as prayed for without giving any reasons, just because the Defendant remained *ex parte*. In fact, the onus is more on the part of the Trial Court when Defendant/Defendants remain *ex parte*, as the Trial Court has to go through the Plaintiff's evidence, his claim, etc. to find out whether the Plaintiff has proved his case. Merely because there is no contest, as the Defendant does not appear, it does not mean that the Plaintiff has proved his case in entirety....."

Contending that simply because, the revision petitioner remained *ex parte*, the Court cannot completely shut its eyes and grant the relief to other side as prayed for, it is prayed that the order of the Trial Court, refusing to condone the delay, is liable to be set aside.

4. Heard the learned counsel for the petitioner and this Court also perused the material documents available on record. There is no representation on behalf of the respondents.

5. It is the stand of the plaintiff in the plaint, which is annexed in the typeset of papers that he stood as guarantor for the purchase of a Mahindra Van by the 1st defendant, who is his childhood friend and executed necessary documents to the 2nd defendant Bank. Since the revision petitioner was irregular in repayment of loan, the Bank filed O.S.No.65 of 1993 and by virtue of preliminary and final decree, brought the mortgaged property of the plaintiff into auction towards realization of Rs.5,19,429/- on account of the failure on the part of the 1st defendant in the capacity of principal borrower.



6. Surprisingly, the same stand was taken by the revision petitioner herein that for helping the plaintiff, he pledged his new Mahindra Van with the 2nd defendant Bank. Therefore, the real fact could be unfolded only on due appraisal of oral and documentary evidence. 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.

7. In the present case on hand, it has been reiterated by the petitioner that pursuant to the mistake committed by the Advocate's Clerk, he was not apprised of the fact of dismissal of the suit as against him in right time and therefore, the delay of 287 days has occurred in filing petition to set aside the exparte order, which is an acceptable ground 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 28.11.2017 passed in I.A.No.165 of 2017 in O.S.No.320 of 2012 by the Sub Judge, Padmanabhapuram is liable to be set aside, but, of course on payment of costs to the respondent.

8. In the result,

(a) this Civil Revision Petition is allowed and the order dated 28.11.2017 passed in I.A.No.165 of 2017 in O.S.No.320 of 2012 by the Sub Judge, Padmanabhapuram, is hereby set aside on condition that the revision petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the plaintiff within a period of two 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 take up 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(T & P)

/True Copy/



To

1. The Sub Judge,
Padmanabhapuram.

2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

Copy to:-

Dominic Bensigar,
S/o.Singarayan,
Singaraya Bhavanam,
Parrapattu,
Manavalakurichi Village,
Kalkulam Taluk,
Kanyakumari District.

+1 CC to Mr.K.BALASUBRAMANI, Advocate in SR.No.68496

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RJ/SV/SAR-3/24/07/2018 - 4P/6C

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