



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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C.R.P. (NPD) (MD) No.875 of 2017 and
CMP (MD) .No.3863 of 2017

T.V. Murugesan

: Petitioner/Petitioner/
defendant

-vs-

Anandan

: Respondent/Respondent /
plaintiff

Prayer: Civil Revision Petition filed under Section 115 of CPC praying against the fair and executable order dated 21.02.2014 passed in the application to condone the delay in I.A.No.312 of 2012 in O.S.No.118 of 2010 on the file of the Subordinate Court, Uthamapalayam.

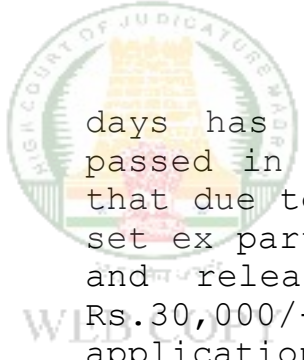
For Petitioner : Mr.T.R. Jeyapalam
For Respondent : Mr.G. Anbu Saravanan

O R D E R

This Civil Revision Petition is filed against the fair and executable order, dated 21.02.2014 passed in the application to condone the delay in I.A.No.312 of 2012 in O.S.No.118 of 2010, on the file of the Subordinate Court, Uthamapalayam.

2. The respondent herein, who is the plaintiff, has filed a suit in O.S.No.118 of 2010, on the file of the Sub Court, Uthamapalayam, for recovery of money and in the said suit, the defendant / revision petitioner herein was set ex parte and ex parte decree was passed on 22.03.2011 and thereafter, the respondent / plaintiff has filed an Execution Petition in E.P.No.84 of 2011 and in the execution petition also he was set ex parte. In such circumstances, the revision petitioner / defendant has filed an application in I.A.No.312 of 2012, to condone the delay of 584 days in filing an application to set aside the ex parte decree passed in O.S.No.118 of 2010 and the same was dismissed on the ground that no proper reasons have been assigned in approaching the Court. Challenging the said order, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that the petitioner got the knowledge of the suit only after filing an Execution Petition and hence, the delay of 584



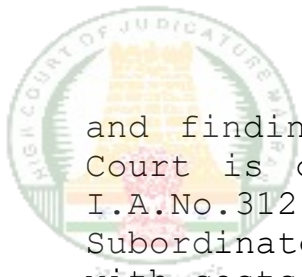
days has been occurred for setting aside the ex parte decree passed in the suit in O.S.No.118 of 2010. He further contended that due to the conduct of his counsel, the petitioner herein was set ex parte in execution petition also and hence, he was arrested and released on execution of Muchalica and on payment of Rs.30,000/-. Thereafter, the petitioner has filed the present application. However, the Court below, without properly appreciating the facts and circumstances, has simply dismissed the application instead of condoning the delay.

4. Learned counsel appearing for the respondent has contended that the petitioner has filed the application only with an intention to drag on the proceedings and the delay in preferring the application for setting aside the ex parte decree has not been properly explained. The Trial Court had carefully examined all the material particulars before rendering its findings and delivered the judgment. The revision petitioner, in support of his contention, has not produced any proof therefor and therefore, finding no valid ground or reasons to condone the delay, the trial Court has dismissed the application. Hence, there is no error in the order of dismissal passed by the learned Appellate Court and the petition is liable to be dismissed *in limine*.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent. This Court also perused the material documents available on record.

6. The main contention of the revision petitioner is that though the revision petitioner was able to contest the suit regularly before the Trial Court, subsequently, due to some inevitable circumstances and missing communication, he did not file an application to set aside the ex parte decree forthwith and he has filed an application in I.A.No.312 of 2012 in O.S.No.118 of 2010 after passing orders in Execution Proceedings. As repeatedly held by this Court and the Hon'ble Supreme 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 has not received proper communication from his lawyer in respect of his case.

7. In the present case on hand, it has been repeatedly reiterated by the petitioner that there was no communication between him and his Advocate and therefore, the delay has occurred in filing an application to set aside the ex parte decree passed in O.S.No.312 of 2012, which is an acceptable ground to consider the case of the petitioner. Accordingly, upon hearing both sides



and finding merits in contention raised by the petitioner, this Court is of the view that the order dated 21.02.2014 passed in I.A.No.312 of 2012 in O.S.No.118 of 2010 by the learned Subordinate Judge, Uthamapalayam, is liable to be set aside, but with costs.

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8. In the result,

(a) this Civil Revision Petition is allowed and the order dated, 21.02.2014 passed in I.A.No.312 of 2012 in O.S.No.118 of 2010 by the learned Subordinate Judge, Uthamapalayam, is hereby set aside and the delay is condoned subject to the condition that the petitioner shall pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) to the respondent counsel within a period of two weeks from the date of receipt of copy of this order;

(b) the learned Subordinate Judge, Uthamapalayam, on production of the receipt in proof of payment of costs by the petitioner within the time limit prescribed by this Court, is directed to number the set aside application and pass orders on the same on merits and in accordance with law, within a period of 15 days thereafter. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

/True Copy/

Sub Assistant Registrar

To

The Subordinate Court, Uthamapalayam.

+1cc to Mr.T.R. Jeyapalam, Advocate SR.No.74529

+1cc to Mr.G. Anbu Saravanan, Advocate SR.No.74206

Trp

MK/SKN RSK/SAR 2/01.08.2018/3P/4C

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