



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.1403 of 2018

M.Jeyagopal

... Petitioner/Petitioner/1st Defendant

-vs-

K.Joythi

... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code praying to set aside the order passed in I.A.No.859 of 2014 in O.S.No.248 of 2012 dated 23.09.2016 on the file of the Subordinate Court, Srivilliputtur.

For Petitioner : Mr.S.C.Herold Singh

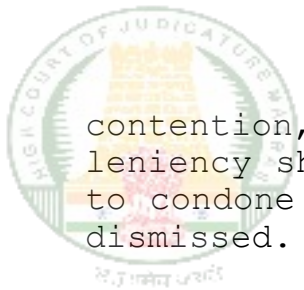
For Respondent : Mr.M.Solaisamy

O R D E R

The revision petitioner is the 1st defendant in O.S.No.248 of 2012 on the file of the Subordinate Court, Srivilliputtur and the plaintiff sought for the relief of recovery of money, etc. in the suit, in which, an exparte order was passed against the defendants on 20.06.2013 on account of their non appearance. Therefore, the revision petitioner/1st defendant has filed an application in I.A.No.859 of 2014 for condoning the delay of 513 days in filing petition for setting aside the said exparte order and the said application came to be dismissed by the Trial Court. Aggrieved by such dismissal, the revision petitioner is before this Court.

2. It is the case of the revision petitioner that the Trial Court had posted the matter for filing written statement on 20.06.2013 and since he had migrated to other State and did not contact his lawyer, the Trial Court had passed a preliminary decree against the petitioner herein. It is the further case of the petitioner that the Court should have considered the genuine reasons put forth by the revision petitioner to condone the delay, as the plaintiff is not entitled to the entire relief as prayed for merely because of non appearance of the defendants. Contending that his non appearance before the Trial Court is neither wanton nor wilful and 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. Learned counsel for the respondent/plaintiff herein has submitted that the exparte order was passed after a period of 10 months, that too, after providing sufficient time to the petitioner, who, despite of giving a number of opportunities to put forth his



contention, had not filed any written statement and therefore, no leniency should be shown to the petitioner and the present petition to condone the delay to set aside the exparte order is liable to be dismissed.

4. Heard the learned counsel on either side and also perused the material documents available on record.

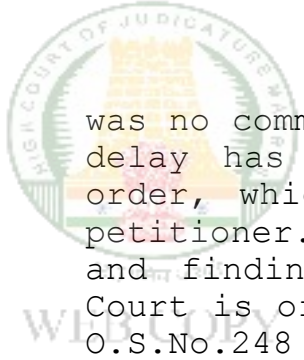
5. It is stated by the petitioner that he had filed an affidavit before the Trial Court, explaining the reasons for the delay and the Trial Court has not taken into account the said affidavit and dismissed the petition in a biased manner. He has further stated that inspite of due diligence, he was not in a position either to know the status of the case or to contact his Advocate, as he had fallen into sick.

6. 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. As regards delay, it is worth referring to the Hon'ble Apex Court decision in the case of N.Balakrishnan vs. M.Krishnamurthy, reported in (1998) 7 SCC 124, wherein, it is held as under:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

7. 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.

8. In the present case on hand, it has been repeatedly reiterated by the petitioner that pursuant to his ill-health, there



was no communication between him and his Advocate and therefore, the delay 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 passed in I.A.No.859 of 2014 in O.S.No.248 of 2012 dated 23.09.2016 by the learned Subordinate Judge, Srivilliputtur, is liable to be set aside, but on payment of costs.

9. In the result,

(a) this Civil Revision Petition is allowed and the order passed in I.A.No.859 of 2014 in O.S.No.248 of 2012 dated 23.09.2016 by the learned Subordinate Judge, Srivilliputtur, is hereby set aside, condoning the delay of 513 days, on condition that the revision petitioner shall pay a sum of Rs.10,000/- as costs to the respondent/plaintiff, within a period of three weeks from the date of receipt of a copy of this order;

b) On production of acknowledgment of payment of costs, the Trial Court is directed to number the petition if any filed to set aside the ex-parte decree and dispose of the same within a period of two months thereafter. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

1. The Subordinate Judge,
Srivilliputtur

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

+1CC TO MR.S.C.HEROLD SINGH ADVOCATE IN S.R.NO.76645.

+1CC TO MR.M.SOLAISAMY ADVOCATE IN S.R.NO.77288.

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