



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.1993 of 2016 and
CMP (MD) .No.9364 of 2016

S. Nagarajan

... Petitioner / 1st defendant

-vs-

M. Easwari

... Respondent / plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying against the ex order and fair order dated 17.06.2014 made in I.A.No.153 of 2013 in O.S.No.76 of 2009 on the file of the District Munsif Cum Judicial Magistrate, Bodinayakkanur.

For Petitioner : Mr.R. Suriyanarayanan

For Respondent : Mr.M. Senthilkumar

O R D E R

This Civil Revision Petition is filed against the fair and decretal order, dated 17.06.2014, made in I.A.No.153 of 2013 in O.S.No.76 of 2009, on the file of the learned District Munsif - Cum - Judicial Magistrate, Bodinayakkanur.

2. The respondent herein, who is the plaintiff, has filed a suit in O.S.No.76 of 2009, on the file of the learned District Munsif -Cum-Judicial Magistrate, Bodinayakanoor, for declaration and recovery of possession and in the said suit, the first defendant / revision petitioner herein was set ex parte and ex parte decree was passed on 15.10.2009 and thereafter, the respondent / plaintiff has filed an Execution Petition in E.P.No.11 of 2011. In such circumstances, the revision petitioner / first defendant has filed an application in I.A.No.153 of 2013, to condone the delay of 1304 days in filing an application to set aside the ex parte decree passed in O.S.No.76 of 2009 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.



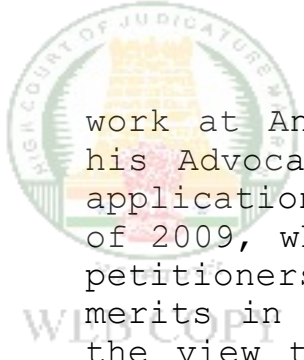
3. The learned counsel appearing for the petitioner submitted that there is no notice served on the petitioner, since the petitioner was working as a Manager in Syndicate Bank at Andhra Pradesh. Further, the petitioner got the knowledge of the suit only after filing an Execution Petition and hence, the delay of 1304 days has been occurred for setting aside the ex parte decree passed in the suit in Suit in O.S.No.76 of 2009. He further contended that the Court below without adopting the procedure of substituted service, has passed an ex parte decree. However, the Appellate Court, without properly appreciating the facts and circumstances, has simply dismissed the application instead of condoning the delay.

4. Learned counsel 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 that he has not received any notice, has not produced any proof therefor and therefore, finding no valid ground or reasons to condone the delay, the Appellate 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.153 of 2013 in O.S.No.76 of 2009 after passing orders in Execution Proceedings in E.P.No. 11 of 2011. 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.

<https://hcservices.ecourts.gov.in/hcservices/> 7. In the present case on hand, it has been repeatedly reiterated by the petitioner that pursuant to his engagement in



work at Andrapradesh, 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.76 of 2009, which is an acceptable ground to consider the case of the petitioners. Accordingly, upon hearing both sides and finding merits in contention raised by the petitioners, this Court is of the view that the order dated 17.06.2014 passed in I.A.No.153 of 2013 in O.S.No.76 of 2009 by the learned District Munsif - Cum - Judicial Magistrate, Bodinayakkanoor, is liable to be set aside, but with costs.

8. In the result,

(a) this Civil Revision Petition is allowed and the order dated, 17.06.2014 passed in I.A.No.153 of 2013 in O.S.No.76 of 2009 by the learned District Munsif - Cum - Judicial Magistrate, Bodinayakkanur, is hereby set aside and the delay is condoned subject to the condition that the petitioner shall pay a sum of Rs.60,000/- (Rupees Sixty Thousand only) to the respondent herein within a period of four weeks from the date of receipt of copy of this order;

(b) the learned District Munsif - Cum - Judicial Magistrate, Bodinayakkanur, 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 within a period of 15 days and thereafter, passing orders in the set aside application, the Trial Court is directed to dispose the suit within a period of three months. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To:

The District Munsif - Cum - Judicial Magistrate,
Bodinayakkanur.

+ 1 cc TO Mr.R.Suriyanarayanan , Advocate in SR No. 69463
+ 1 cc TO Mr.M.Senthil Kumar , Advocate in SR No. 69535

trp

AE/RP/SAR3/23.07.2018/3P/4C