



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) (MD) No.1994 of 2016

Arumugam

... Petitioner / respondent

-vs-

1.Natarajan

2.Ramasamy

... Respondents /Appellants

Prayer: Civil Revision Petition is filed under Section 115 CPC to set aside the fair and decreetal order, passed in I.A.No.109 of 2014 in A.S.No.37 of 2008, dated 13.01.2015 on the file of the Subordinate Court, Sankarankovil.

For Petitioner : Mr.F.X. Eugene

For Respondents : Mr. K. Karthick

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order, passed in I.A.No.109 of 2014 in A.S.No.37 of 2008, dated 13.01.2015 on the file of the Subordinate Court, Sankarankovil.

2. The respondents herein, who are the appellants, have filed an appeal suit in A.S.No.37 of 2008, on the file of the Sub Court, Sankarankvoil, against the Judgment and Decree passed in O.S.No.122 of 2005, on the file of the District Munsif Cum Judicial Magistrate, Sivagiri, and in the said appeal suit, the respondent / revision petitioner herein was set ex parte and ex parte decree was passed on 01.03.2015. In such circumstances, the revision petitioner has filed an application in I.A.No.109 of 2014, to condone the delay of 1460 days in filing an application to set aside the ex parte decree passed in A.S.No.37 of 2008 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 the petitioner met with an accident, for which, he has sustained severe fracture injuries in left leg and due to the injury, he was not able to attend the hearing on 01.03.2015 and hence, ex parte decree was passed on the said date. Thereafter, the petitioner has filed an application in I.A.No. 109 of 2014 to set aside the ex parte decree passed in A.S.No.109 of 2014 with a delay



of 1460 days and the same was dismissed. Aggrieved over the same, the petitioner has filed the present Civil Revision Petition.

4. Learned counsel appearing for the respondents 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 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.

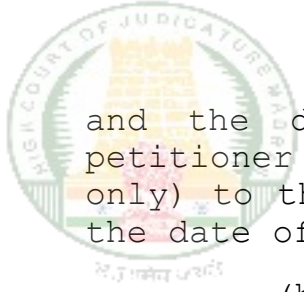
5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. This Court also perused the material documents available on record.

6. The main contention of the revision petitioner is that though the revision petitioner was able to contest the appeal suit regularly before the Court below, subsequently, due to some inevitable circumstances, he did not file an application to set aside the ex parte decree forthwith and he has filed an application in I.A.No.109 of 2014 in A.S.No.37 of 2008, with a delay 1460 days. 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 pursuant to his serious physical ailment, the delay has occurred in filing an application to set aside the ex parte decree passed in A.S.No.37 of 2008, 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 13.01.2015, passed in I.A.No.109 of 2014 in A.S.No.37 of 2008, by the learned learned Subordinate Judge, Sankarankovil, is liable to be set aside, but with costs.

8. In the result,

(a) this Civil Revision Petition is allowed and the order dated, 13.01.2015 passed in I.A.No.109 of 2014 in A.S.No.37 of 2008 by the learned Subordinate Judge, Sankarankoil, is hereby set aside



and the delay is condoned subject to the condition that the petitioner shall pay a sum of Rs.15,000/- (Rupees Fifteen 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, Sankarankoil, 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.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The Subordinate Judge, Sankarankovil.

+1cc to M/S.K. Karthick, Advocate SR.No. 74299

C.R.P. (NPD) (MD) No.1994 of 2016
20.07.2018

trp
JM/MMS/SAR 3/11.08.2018/3P/3C