



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (NPD) No.589 of 2016

and

C.M.P. (MD) No.2597 of 2016

L.Britto

... Petitioner/Petitioner/Defendant

/Vs./

M.A.Jerome

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition - filed under Section 115 of the Civil Procedure Code, to call for the records and set aside the dismissal order passed in I.A.No.487 of 2015 in O.S.No.52 of 2014 on the file of the Principal Sub Court, Nagercoil, dated 21.12.2015 and set aside and allow the same.

For Petitioner	: Mr.P.Subbiah
For Respondent	: Mr.F.Deepak

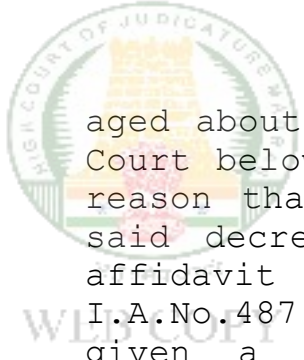
ORDER

The defendant in O.S.No.52 of 2014 on the file of the Principal Sub Court, Nagercoil, is the revision petitioner herein. The respondent / plaintiff filed the said suit on the strength of pro-note executed by the revision petitioner herein. The revision petitioner entered appearance. In fact, an order effecting attachment before judgment in I.A.No.486 of 2014 was passed on 05.11.2014. The revision petitioner remained exparte. Thereafter, exparte decree came to be passed on 30.01.2015 in O.S.No.52 of 2014. To set aside the same, the revision petitioner filed an application under Order 9 Rule 13 CPC. There was a delay on 115 days in filing the same. Therefore, he filed I.A.No.487 of 2015 for condoning the same. The Court below, by order dated 21.12.2015, dismissed the said I.A.No.487 of 2015. Challenging the same, the civil revision petition has been filed.

2. Heard the learned counsel on either side.

<https://hcservices.ecourts.gov.in/hcservices/>

3. It is seen that the plaintiff is an ex-service man, who was



aged about 73 years even at the time of filing of the suit. The Court below has chosen to dismiss I.A.No.487 of 2015 only for the reason that the revision petitioner had deliberately allowed the said decree to be made exparte. The reasons assigned in the affidavit filed in support of the Interlocutory Application in I.A.No.487 of 2015 were not found convincing. The Court below has given a specific finding that with full knowledge of the developments taking place in the suit, the revision petitioner had allowed the case to progress beyond a point and thereafter filed the present application for setting aside the exparte decree. Since I am convinced that the revision petitioner has not given sufficient cause for condoning the delay, the order impugned in the civil revision petition is affirmed. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal Subordinate Judge, Nagercoil.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.F.DEEPAK, ADVOCATE IN SR No. 81934

SM
TE/SKN/SAR-2 : 01/10/2018 : 2P/5C

Order made in
C.R.P. (MD) (NPD) No.589 of 2016
03.09.2018