

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP.(NPD).No.2839 of 2008

and

M.P.No.1 of 2008

Kandan,
S/o.Sadayan,
Veerabayangaram Kattukottagai Village,
Kallakurichi Taluk.

... Petitioner

.Vs.

Shanmugam,
S/o.Saravanapillai,
Nainarpalayam village,
Kallakurichi Taluk.

... Respondent

PRAYER: Civil Revision petition filed under Article 227 of Constitution of India against the fair and decreetal order of the Principal District Munsif Court at Kallakurichi, dated 27.06.2008 in I.A.No.3828 of 2007 in O.S.No.801 of 2005.

For Petitioner : Mr.P.Valliappan

For Respondent : No appearance

ORDER

Aggrieved over the order of the trial Court passed in I.A.No.3828 of 2007 in O.S.No.801 of 2005, dismissing the petition filed to condone the delay of 221 days in filing the petition to set aside the exparte order passed

in O.S.No.801 of 2005.

2.The brief facts of the case are as follows:

O.S.No.801 of 2005 has been filed by the respondent herein for the recovery of suit amount of Rs.30,000/- with interest, on the basis of the pro-note said to have been executed by the revision petitioner herein. The above suit was decreed exparte on 29.03.2007. According to the revision petitioner since he went to Kerala for eking out his livelihood, the notice sent by his counsel was not served on him and therefore, he did not have knowledge about exparte decree. Only at the stage of execution proceedings, he came to know about the exparte decree. Therefore, petition to condone the delay of 221 days in filing the petition to set aside the exparte decree was filed. The same was objected by the decree holder on the ground that reasons are not properly assigned. Hence, the trial Court dismissed the petition simply on the ground that reasons assigned by the petitioner is not acceptable.

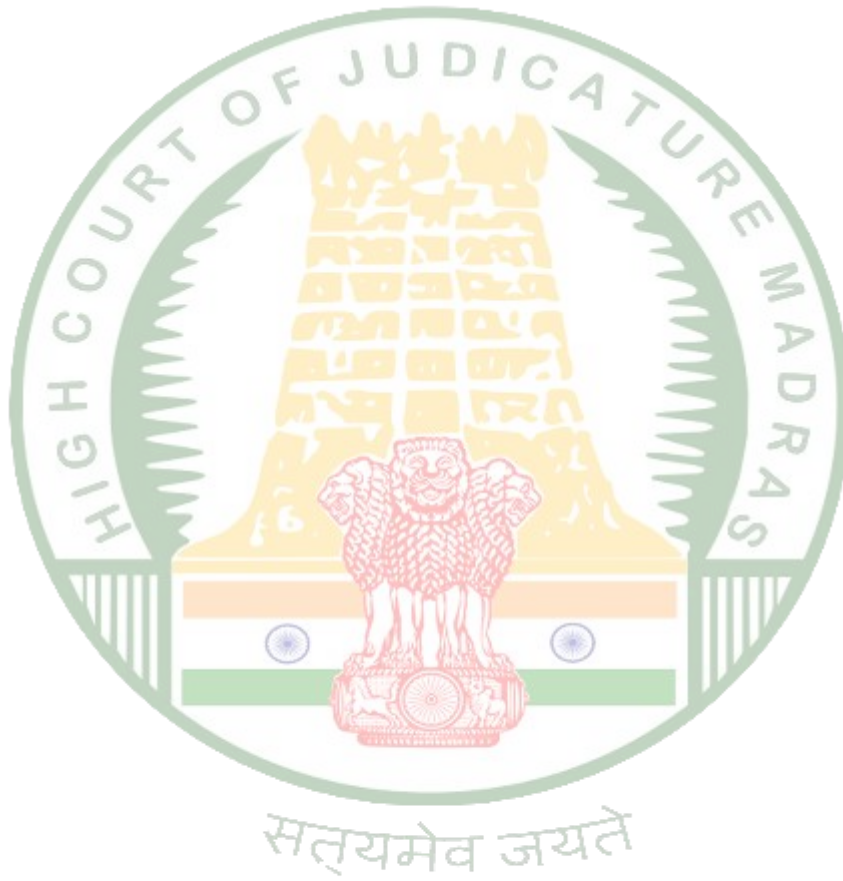
3.Heard Mr.P.Valliappan, learned counsel for the petitioner. There is no representation on behalf of the respondent.

4.The learned counsel appearing for the revision petitioner would contend that the revision petitioner is a rustic villager and he has a valid

defense in the suit. Admittedly, the decree holder is none other than an advocate, when the rustic villager has given a reason for such delay, the Court ought to have accepted the same and exercised discretion in his favour.

5. On perusal of the order of the trial Court reveals that the trial Court dismissed the application only on the ground that the reasons assigned by the petitioner is not believable. The petitioner has in fact averred in his affidavit to the fact that at the relevant time, he went to Kerala to eke out livelihood and he has not received the notice sent by his counsel and therefore, there is a delay of 221 days in filing the petition to set aside the exparte decree passed in the Suit. The nature of the affidavit and the pleadings of the party make it clear that the revision petitioner is a rustic villager. That being the position, on considering the reasons and background of the parties, the trial Court ought to have extended liberal approach in order to give a fair chance to the revision petitioner to establish substantial defense in this suit. Of course, limitation is not meant to destroy the rights of the parties, only the substantial rights of the parties has to be taken into consideration. When the rustic villager has given us some reasons, the Court should lean in his favour for advance substantial justice. Hence considering the above aspect and the decree holder has a legal background and is an advocate, I am of the view that the revision

petitioner has to be given one more chance to establish his defense in the suit filed against him.



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N.SATHISH KUMAR, J.,

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6. Accordingly, the order of the Principal District Munsif, Kallakurichi, dated 27.06.2008 passed in I.A.No.3828 of 2007 in O.S.No.801 of 2005 is set aside, delay in filing the petition to set aside the exparte decree passed in O.S.No.801 of 2005 is condoned and this Civil Revision Petition is allowed. The trial Court shall take the petition to set aside the exparte decree passed in O.S.No.801 of 2005, shall proceed and allow the same and thereafter, dispose of the Suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is also closed.

23.04.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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To
The Principal District Munsif,
Principal District Munsif Court,
Kallakurichi.

CRP.(NPD).No.2839 of 2008