

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P. (NPD) No.3243 of 2019
and C.M.P.No.21120 of 2019

Malarkodi

... Petitioner

Vs.

Ayyasamy

... Respondent

Prayer: Petition filed under Section 115 of the Code of Civil Procedure praying to set aside the orders of the learned I Additional Subordinate Judge at Coimbatore dated 04.04.2019 in I.A.No.1262 of 2017 in O.S.No.748 of 2012.

For Petitioner : Mr.V.Nicholas

For Respondent : Mr.G.Karthikeyan

ORDER

This revision petition has been filed against the fair and decretal order passed in I.A.No.1262 of 2017 in O.S.No.748 of 2012 by the I Additional Subordinate Judge, Coimbatore, by order dated 04.04.2019.

2.Before the trial Court, the respondent/plaintiff filed a suit for recovery of money. The said suit, according to the respondent/plaintiff, was posted for hearing on 13.04.2015, as informed by his counsel, therefore, the respondent/plaintiff thought of appearing before the Court on 13.04.2015. However, the case actually was posted on 06.03.2015. On that date, since there was no representation on behalf of the plaintiff, the suit was dismissed for default and in order to restore the suit, which was dismissed for default on 06.03.2015, necessary petition was filed with a very huge delay of 851 days. In order to condone the same, application under Section 5 of the Limitation Act was filed i.e., the present application in I.A.No.1262 of 2017 and the said application since has been allowed by the trial Court, aggrieved over the same, the present revision petitioner, who is the defendant in the suit, filed the present revision petition.

3.Heard Mr.V.Nicholas, learned counsel appearing for the revision petitioner and Mr.G.Karthikeyan, learned counsel appearing for the respondent.

4.I have gone through the affidavit filed before the trial Court in support of the Section 5 application and the relevant

portion of the said contents of the affidavit are extracted hereunder:

"Absolutely I have no knowledge that the above case was posted on 06.03.2015 before this Honourable Court for Trial and I was informed by my counsel that the next hearing of the above case is only 13.04.2015 and in the mean while the above case was Dismissed for Default on 06.03.2015 without any default of myself. The above case is Dismissed for Default without any valid, negligent act on my part for which I could not be penalized as I have given my hard earned money to the Respondent/Defendant to clear off her Suit Proceedings in another case. I have fair chance of succeeding the above case as I have lend the money to the Respondent by way of registered Mortgage Deed. I might have been given a chance to put forward my case. The above case is Dismissed for Default without any negligent, wanton or default act on my part. Only on the information by my erstwhile Counsel that the above case is adjourned to 13.04.2015 I have not attended the case for the hearing 06.03.2015 and In the meanwhile the above case was Dismissed for Default on 06.03.2015 itself without my knowledge.

The non-appearance of mine is neither willful nor wanton. I have got fair chance of succeeding the case. Unless an opportunity is given to me to contest the case I will be put to very great loss and hardship which can not be compensated by any means. Now I am at any time ready to contest the above case. I pray this honourable court to give me a chance to contest the case. Unless the opportunity of being heard I will be put to very great loss and hardship which cannot be compensated by any means.

There is a delay of 851 days in filing the Application to Restore the Suit which was Dismissed for Default on 06.03.2015. The above delay is caused not due to any willful or wanton act on my part and only on 01.08.2017 I could get the knowledge of the Dismissal of Suit for Default and immediately I am filing the application to Restore the Suit which was Dismissed for Default on 06.03.2015 with this Application to condone the delay. The delay is not caused any willful or wanton act on my part. Absolutely I have no knowledge of Dismissal of Suit for default. I have knowledge of the Dismissal of Suit only on 01.08.2017."

5.After having gone through the said averment made in the affidavit, it comes to know that, the plaintiff's counsel claimed to have stated to the plaintiff that the suit is posted on 13.04.2015, believing that, the plaintiff thought of appearing on 13.04.2015. But, subsequently he came to know that, on 06.03.2015 the suit was posted and was dismissed for default.

6.Assuming that, the suit was posted on 06.03.2015 and mistakenly the date has been stated, the plaintiff did not appear before the Court and therefore dismissed on 06.03.2015, atleast on the next hearing date, as noted by the plaintiff, which falls on 13.04.2015, definitely the plaintiff would have contacted the counsel and would have been in a position to know the suit was dismissed on 06.03.2015. If that being the case, what for the plaintiff waited for 851 days to file the petition to restore the suit has not at all been stated anywhere in the affidavit filed in support of the I.A.No.1262 of 2017 before the trial Court. It is simply stated that, there is a delay of 851 days in filing the application to restore the suit, which was dismissed for default on 06.03.2015. The said delay is caused not due to any wilful or wanton act on the part of the petitioner and only on 01.08.2017, he could get the knowledge of the dismissal of the suit for default.

7.The said reasoning given by the respondent/plaintiff who filed the Section 5 application before the trial Court is absolutely a false one, as the said statement is self-contradictory of the very statement given by the respondent/plaintiff in the earlier part of affidavit itself. Therefore, without considering these issues, since mechanically the learned trial Court Judge has allowed the said application by condoning the delay of 851 days, this Court feels that, the said order is completely erroneous and hence, it is liable to be interfered with. Accordingly, the said impugned order made in I.A.No.1262 of 2017 is hereby set aside.

8.Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(C.C.C.)

/True Copy/

Sub Assistant Registrar

To

The I Additional Subordinate Judge, Coimbatore.

+1 cc to M/s.G.Karthikeyan,Advocate Sr.No. 94394

+1 cc to M/s.V.Nicholas,Advocate Sr.No. 94729

AKM/18.03.2020/3P-4C /

C.R.P. (NPD) .No.3243 of 2019