



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2019

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (NPD)No.1444 of 2011
and
M.P. (MD)No.1 of 2011

Rayappan :Petitioner

vs.

P.Murugesan :Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the order passed in I.A.No.7 of 2010 in O.S.No.1939 of 2005 by the II Additional District Munsif, Trichy, dated 11.02.2011.

For Petitioner :Mr.V.Karuna

For Respondent :Mr.V.Janakiramulu

ORDER

This Civil Revision Petition is filed by the defendant in the suit in O.S.No.1939 of 2005 on the file of the II Additional District Munsif Court, Trichy, as against the order dismissing the petition filed by the revision petitioner to condone the delay of 488 days in filing a petition to set aside the ex parte decree.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The respondent herein, as plaintiff, filed a suit for recovery of money as against the revision petitioner. Since the revision petitioner did not appear when the matter was called, the revision petitioner was set ex parte. An ex parte decree was passed on 16.04.2008. Thereafter, the revision petitioner, filed a petition in I.A.No.7 of 2010 to condone the delay of 488 days in filing a petition to set aside the ex parte decree that was passed in the suit for recovery of money.



2.2.This petition was dismissed by the trial Court by holding that the petitioner has not given sufficient reason to condone the delay. The lower Court further pointed out that the respondent has filed Execution Petition in E.P.No.147 of 2009 to recover the money by attaching the salary of the revision petitioner and that the petition to set aside the ex parte decree was to prolong the execution beyond the retirement of the judgment debtor. The trial Court further found that the apprehension of the respondent appears to be fair. Aggrieved by the same the above revision petition is filed.

3.It is not in dispute that the revision petitioner suffered an ex parte decree and the petition to set aside the ex parte decree has been filed with a delay of 488 days. Though the Court in the case of a petition filed under Section 5 of Limitation Act, exercise its discretion based on equity, there cannot be any excuse for the delay, if sufficient reason is not stated by the petitioner and the Court cannot extend the time by showing leniency.

4.Considering the facts in this case, this Court is able to see that the delay of 488 days has not been properly explained. Though it is stated that the petitioner could not contact his advocate nor give him due instructions, the delay, as such, has not been satisfactorily explained. However, the contention that the petitioner came to know about the ex parte decree only later and that he had no occasion to meet his Counsel at the relevant point of time, cannot be ruled out. Hence, this Court is inclined allow this petition on terms.

5.Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.7 of 2010 in O.S.No.1939 of 2005 by the II Additional District Munsif, Trichy, dated 11.02.2011, is set aside. The petition in I.A.No.7 of 2010 in O.S.No.1939 of 2005 stands allowed on condition that the petitioner pay a sum of Rs.10,000/- as cost to the respondent within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

The II Additional District Munsif, Trichy.

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-80444[F] dated 07/08/2019)

C.R.P. (MD) (NPD)No.1444 of 2011
05.08.2019

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