



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.07.2019
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

C.R.P (MD) No.1065 of 2019
and
C.M.P (MD) No.5813 of 2019

Rengasamy .. Petitioner/ Defendant

.Vs.

Thangaraj .. Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 C.P.C. against the fair and decreetal order dated 07.03.2019 made in I.A.No.308 of 2015 in O.S.No.336 of 2005 by the Second Additional Sub Court, Tiruchirappalli.

For petitioner : Mr.B.Prahalad Ravi

ORDER

Against the dismissal of the petition seeking to condone the delay of 1823 days in filing a petition to set aside the ex-parte decree passed in the money suit, this revision has been filed.

2.The respondent / plaintiff filed the suit in O.S.No.336 of 2005 for recovery of money. Due to non-appearance of the petitioner /defendant, he was set *ex parte* and an *ex parte* decree was passed on 22.02.2010. Since there was a delay of 1823 days in filing a petition to set aside the *ex parte* decree, the petitioner / defendant filed I.A.No.308 of 2015. The Court below dismissed the same, against which, the present civil revision petition has been filed.

3.The learned counsel for the petitioner / defendant would submit that the counsel who had all along conducted the case for the petitioner, is no more. The petitioner came to know about the *ex parte* decree passed in the suit, only after receiving the notice in E.P.No.225 of 2011. Since he had no knowledge about the *ex parte* decree, he could not file the petition in time to set aside the same and therefore, the delay has occurred. The Court below without considering the same, has erroneously dismissed the petition. Thus, he prayed to set aside the order passed by the Court below.

4.Heard the learned counsel for the petitioner and perused the materials available on record.



5. Perusal of records would show that due to non-appearance on the part of the petitioner / defendant, he was set *ex parte* and an *ex parte* decree was passed on 22.02.2010. The only reason assigned by the petitioner / defendant is that the counsel engaged by him did not inform him about the case till his death. It is contended in the counter filed by the respondent / plaintiff that the notice in the execution proceedings was served on the petitioner even in the year 2012 itself and he also entered appearance through his counsel, but the present petition has been filed only in the year 2015. The petitioner / defendant has not denied the abovesaid allegation.

6. The delay is 1823 days and the reason given by the petitioner / defendant is not acceptable. The length of delay is not a minimal one. It is 1823 days. It is a settled principle that reason for each and every day delay has to be given. But, there is no proper explanation for such an inordinate delay. Therefore, the reasoning assigned by the petitioner / defendant is not satisfactory. The Court below has rightly dismissed the petition, which does not warrant any interference at the hands of this Court. Hence, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Second Additional Sub Judge, Tiruchirappalli.

2. The Record Keeper, V.R. Section, Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1cc to Mr. B. PRAHALAD RAVI, Advocate, SR.No.74262

ORDER MADE IN
C.R.P (MD) No.1065 of 2019
05.07.2019

NA (02.08.2019) 2P : 5C