



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**C.R.P (MD) .No.1320 of 2019
and
C.M.P. (MD) .No.7165 of 2019**

A.S.Guru Ambeth

... Petitioner/
Petitioner / Defendant

Vs.

M.Panchavarnam

... Respondent /
Respondent / Plaintiff

PRAYER:- Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 15.11.2018 passed in I.A.No.112 of 2017 in O.S.No.41 of 2013 by the Principal District Court, Theni.

For petitioner

: Mr.S.J.Chakkaravarthy

ORDER

This civil revision petition has been filed by the petitioner challenging the order dated 15.11.2018 passed in I.A.No.112 of 2017 in O.S.No.41 of 2013, whereby and whereunder the Court below dismissed the petition filed by the petitioner seeking to condone the delay of 630 days in filing a petition for setting aside *ex parte* decree dated 26.02.2016.

2. The respondent herein as plaintiff has filed the suit in O.S.No.41 of 2013 for recovery of a sum of Rs.19,14,500/- with interest from the date of petition till the date of realization, based on Promissory Note. The petitioner/defendant entered appearance and filed his written statement on 08.01.2014. Though the case was adjourned for several times, the petitioner / defendant did not choose to cross examine the witnesses on the side of the respondent/plaintiff and he was set *ex parte* and thereafter, the suit was decreed in *ex parte* on 26.02.2016. For filing a petition for setting aside the *ex parte* decree, there occurred a delay of 630



days. For condoning the said delay, the petitioner /defendant has filed I.A.No.112 of 2017. The Court below has dismissed the said petition holding that the petitioner has not averred sufficient reason for condoning the enormous days of delay. Challenging the said order, the petitioner/defendant is before this Court.

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

4. It is seen that though the petitioner/defendant entered appearance before the Court below and filed written statement as early as on 08.01.2014, he dragged the matter about two years only for cross examination of the witnesses on the side of the respondent/plaintiff. The Court below has provided more than sufficient opportunities to the petitioner/defendant to put forth his case. The petitioner/defendant has used the same only for dragging on the matter. Therefore, the Court below has set him as ex parte and passed ex parte decree on 26.02.2016.

5. In order to execute the decree, the respondent/plaintiff filed execution petition on 02.01.2017. On 27.03.2017 the petitioner/defendant entered his appearance through a counsel. Though several adjournments were given by the Court below for filing counter, the petitioner/defendant has not filed his counter and hence, the Court below has set him as ex parte in the execution petition also. Now, the execution petition is stated to be posted for enquiry.

6. In the meantime, the petitioner/defendant filed I.A.No.112 of 2017 seeking to condone the delay of 630 days in filing a petition for setting aside the ex parte decree. The only reason stated by the petitioner for condoning the enormous days of delay is that he could not produce the documents sought for by his counsel for cross examination of the witnesses and therefore, he could not cross examine the witnesses and now he got the relevant documents sought for by his counsel and therefore, the delay may be condoned. The reason stated by the petitioner/defendant is not sufficient for condoning the enormous days of delay. The petitioner/defendant has not averred about the steps taken by him for collection of the documents. Admittedly, the Court below has given about two years time to the petitioner/defendant to cross examine the witnesses. During that time, he could have collected evidences. But, it was not done so by the petitioner/defendant. As stated earlier, the Court below has given sufficient opportunities and it was not utilized by the petitioner/defendant. Considering the above and also considering the reason stated by the petitioner/defendant for condoning the enormous days of delay, the Court below has dismissed the petition. This Court does not find any reason to interfere with the order passed by the Court below.



7. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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// True Copy //

Sd/-

Assistant Registrar (Ad-I)

Sub Assistant Registrar(CS)

To

1.The Principal District Judge,
Theni.

+1 CC to Mr.S.J.CHAKKARAVARTHY, Advocate SR-80519.

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