



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

C.R.P. (MD).No.1514 of 2019

Sankararajan :Petitioner/Petitioner/  
Plaintiff  
Vs.

1.Arunachalam

2.Chellamala :Respondents/Respondents  
Defendants

**PRAYER:** This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records relating to the order and decretal order dated 06.07.2019 made in IA.No.336 of 2018 in O.S.No.72 of 2014 on the file of the Principal District Munsif Court, Tenkasi, Tirunelveli District.

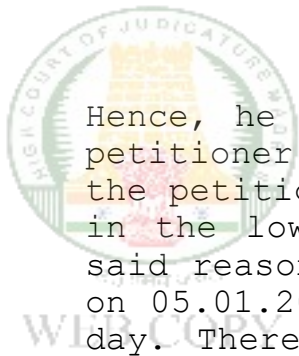
For Petitioner : Mr.M.Sankar  
For Respondents : Mr.K.Abiya

**ORDER**

Against the dismissal of the petition to condone the delay of 52 days in filing the petition to set aside the *ex parte* decree, this revision is filed by the plaintiff.

2.The revision petitioner is the plaintiff and the respondents are the defendants in O.S.No.72 of 2014 on the file of the Principal District Munsif Court, Tenkasi. The above suit was filed for declaration, mandatory injunction and other reliefs against the respondents/defendants. The revision petitioner/plaintiff did not appear in the suit and therefore, he was set *ex parte* and *ex parte* decree was passed on 06.07.2019. Thereafter, the revision petitioner filed an application to set aside the *ex parte* decree along with a petition to condone the delay of 52 days in filing the petition to set aside the *ex parte* decree, whereby, the lower Court dismissed the condone delay petition, against which, the revision petitioner/ plaintiff has filed this revision.

3.The learned counsel for the petitioner would submit that the petitioner was suffering from chronic pain on the left knee and thereby, he went for country treatment in Ariyankavu at Kerala.



Hence, he did not know about the case proceedings and as such, the petitioner's counsel in the lower Court assured that he would call the petitioner when his presence is warranted. But, the then counsel in the lower Court has failed to call the petitioner. Due to the said reason, the petitioner has not appeared before the trial Court on 05.01.2018 and hence, the suit was dismissed for default on that day. Thereafter, the petitioner filed an application to set aside the dismissal order along with condone delay petition in I.A.No.336 of 2018. Even though valid reasons are stated in the said application, the same was not considered by the trial Court and dismissed the same on 06.07.2019. Thus, the learned counsel prays for allowing this revision petition.

4.Per contra, the learned counsel appearing for the respondents would contend that due to non appearance of the petitioner on 22.06.2016, an *ex parte* decree was passed in the suit and the same has been set aside vide order dated 19.09.2017 in I.A.No.1031 of 2016 filed by the petitioner. Thereafter, when the suit was posted for hearing, the petitioner was again called absent and therefore, he was set *ex parte* and *ex parte* decree was passed on 05.01.2018 and to set aside the *ex parte* decree, the petitioner filed a petition along with I.A.No.336 of 2018 to condone the delay of 52 days in filing the petition to set aside the *ex parte* decree dated 05.01.2018. In support of the reasons for 52 days delay, the petitioner stated that he suffered from knee pain and therefore, he could not able to appear on 05.01.2018. After hearing the case, the trial Court dismissed I.A.No.336 of 2018, holding that the petitioner remained *ex parte* on two times and he did not produce the medical certificates to show that he was taking treatment for his knee pain. The learned counsel further contended that the petitioner filed the restoration petition is only within an intention to drag on the suit proceedings. Hence, he prays for dismissing this revision petition.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.Perusal of record shows that the petitioner was suffering from chronic pain on his left knee and he was taking treatment in Ariyankavu at Kerala and hence, he could not appear before the trial Court. Without considering the facts and ailment of the petitioner, the Court below dismissed the condone delay application. The treatment taken by the petitioner in Kerala is not suspectable one. The Court below should have allowed the condone delay petition. Therefore, this Court is inclined to give one more opportunity to the revision petitioner, since the petitioner is the plaintiff in the suit and such opportunity will provide justice.

7.Accordingly, the fair and decreetal order made in I.A.No.336 of 2018 in O.S.No.72 of 2014 by the Principal District



Munsif Court, Tenkasi, Tirunelveli District, dated 06.07.2019, is hereby set aside and this Civil Revision Petition is allowed. No costs.

8. Taking into Consideration of the fact that the suit is of the year 2014, the Principal District Munsif Court, Tenkasi, Tirunelveli District, is directed to dispose the suit, within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dss

To  
The Principal District Munsif Court,  
Tenkasi, Tirunelveli District.

+1 CC to M/s.K.RAJMAHENDRAN, Advocate ( SR-89478[F] )

+1 CC to M/s.M.SANKAR, Advocate ( SR-89543[F] )

Order Made in  
C.R.P. (MD).No.1514 of 2019  
25.09.2019

ma (CO)  
TR(23.01.2020) 3P 4C