



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P(MD)No.565 of 2011 (NPD)

and

M.P.(MD).No.1 of 2011

Sakthivel .. Petitioner / Petitioner / Defendant

Vs.

Gnanasundram .. Respondent / Respondent / Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order, dated 11.02.2011, passed in I.A.No.148 of 2010 in O.S.No.10 of 2006 by the Subordinate Court, Pattukkottai.

For petitioner : Mr.R.P.Ramachanthiran
For respondent : Mr.V.Ramamoorthy

ORDER

This petition has been filed by the petitioner/defendant as against the order dated 11.02.2011, passed by the Court below, dismissing the petition filed under Section 5 of the Limitation Act.

2. It is seen that the respondent / plaintiff had filed the suit in O.S.No.10 of 2006 for specific performance and in the alternative, recovery of advance amount with accrued interest and costs. Due to non appearance of the petitioner, the suit was decreed in *ex parte* on 20.04.2007. Subsequently, the respondent / plaintiff filed E.P.No.17 of 2008. The petitioner / defendant appeared before the Court below on 18.07.2008 and 30.07.2008 and thereafter, he did not appear before the Court below. Hence, on 17.09.2008 an *ex parte* order passed by the Court below in the execution proceedings. In order to set aside the said *ex parte* order, the petitioner/defendant filed E.A.No.94 of 2010. The Court below, by order dated 08.02.2011, dismissed the said petition. In the meantime, the petitioner filed I.A.No.148 of 2010 seeking to condone the delay of 1199 days in filing a petition to set aside the *ex parte* decree, dated 20.04.2007. On 11.02.2011, the Court below dismissed the delay petition holding that there is no sufficient reason assigned for condoning the enormous days of delay. Aggrieved by that order, the petitioner filed this petition.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Heard the learned counsel appearing for both sides and perused the materials available on record.



4. It is settled law that the condonation of delay is a matter of discretion of the Court. There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. The length of delay is not material and acceptability of explanation is important. Even the delay of long range can be condoned, if the explanation is satisfactory.

5. In this case, the only reason assigned by the petitioner for condoning the enormous days of delay is that he was suffered by jaundice and he was taking country treatment and hence, the delay of 1199 days had occurred. The first appellate Court dismissed the delay petition holding that the petitioner has not assigned valid reason for condoning the enormous days of delay. Though the petitioner stated that he suffered by jaundice, the petitioner has not specifically stated the period during which he was suffered by jaundice. In the affidavit filed in support of the petition, dated 30.03.2011, it is stated that the petitioner was taking country treatment for three years and thereafter, he recovered from illness. Even now, the petitioner has not specified the period. He has also not produced any oral and documentary evidence in order to prove his long period of sufferings and treatment.

6. It is further stated in the affidavit, dated 30.03.2011, that the petitioner was suffering from jaundice prior to the *ex parte* decree dated 20.04.2007 passed against him. In the very same affidavit, at paragraph No.9, it is stated that since his advocate refused to appear before the Court in the execution proceedings, he appeared in person before the Court on 18.07.2008 and 30.07.2008, and thereafter, due to illness, he could not appear before the Court on 17.09.2008 and therefore, the *ex parte* order was passed against him. It shows that the petitioner very well knew about the *ex parte* decree passed against him in the suit and he could have filed a petition to aside the *ex parte* decree during that period by engaging an Advocate. But, he has not done so. Delay cannot be condoned mechanically in the absence of plausible and acceptable explanation. 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.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Subordinate Judge,
Pattukkottai.

2.The Record Keeper,

V.R. Section,

Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1CC TO MR.V.RAMAMURTHY, Advocate Sr. No. 59323

C.R.P (MD) No.565 of 2011 (NPD)
04.04.2019

MR (CO)

TR (30.04.2019) 3P 5C