

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1897 of 2015
and M.P.No.1 of 2015

Krishnan

.. Petitioner/Defendant

Vs.

L.Kanthammal

.. Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 24.11.2014 made in I.A.No.348 of 2014 in O.S.No.184 of 2008 on the file of the Sub-Court, Arakkonam.

For Petitioner : Mr.A.Gouthaman

For Respondent : No appearance

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 24.11.2014 made in I.A.No.348 of 2014 in O.S.No.184 of 2008 on the file of the Sub-Court, Arakkonam.

2.The petitioner is defendant and respondent is the plaintiff in O.S.No.184 of 2008 on the file of the Sub-Court, Arakkonam. The respondent filed the said suit for recovery of money against the petitioner. The petitioner did not appear, he was set exparte and exparte decree was passed on 02.02.2009. The petitioner filed I.A.No.348 of 2014 to condone the delay of 756 days in filing the petition to set aside the exparte decree. The respondent opposed the said petition. The learned Judge dismissed the said petition holding that the reason given by the petitioner is not believable and acceptable.

3. Against the said order of dismissal dated 24.11.2014 made in I.A.No.348 of 2014 in O.S.No.184 of 2008, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner has not received any summons and came to know the exparte decree only when he received notice in the E.P. on 09.04.2011. The learned counsel for the petitioner also stated that the petitioner's wife received the suit summons and she failed to intimate the same to the petitioner and to prove the same, the petitioner examined his wife as P.W.2. The learned Judge failed to see that the suit summon was not served as per the procedure and the learned Judge for erroneous reason dismissed the petition. The petitioner has also filed written statement along with the petition and the same has to be considered while deciding the petition filed to condone the delay of 756 days in filing the petition to set aside the exparte decree. The petitioner has given valid reason for condoning the delay of 756 days. The Hon'ble Apex Court and this Court

have condoned the delay of 1000 days and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition.

5.Though the respondent has entered appearance through counsel, there is no representation on behalf of her, when the matter is taken up for hearing.

6.Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

7.From the materials on record, it is seen that the petitioner was set exparte and exparte decree was passed on 02.02.2009. The petitioner filed I.A.No.348 of 2014 to condone the delay of 756 days in filing the petition to set aside the exparte decree. According to the petitioner, the suit summon was not served on him, but served on his wife, who did not inform about the same. The learned counsel appearing for the petitioner contended that the suit summon was not served properly. The said contention is not correct. Any suit summons or notice served on an adult

member of the family is a valid service. The learned Judge considering the provisions of Civil Procedure Code as per which the service on adult member of the party is a valid service and admission of the petitioner that the suit summon was received by his wife, held that the reason given by the petitioner is unbelievable and unacceptable. It is true, the length of delay is not a criteria. The parties must give valid and sufficient reason to condone the delay. The intention of the parties must be bonafide. In the present case, the reason given by the petitioner for condoning the delay is not valid, sufficient and acceptable. In view of the same, the order of the learned Judge is not interfered with as there is no irregularity or illegality in the said order.

8.In the result, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
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V.M.VELUMANI, J.

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To

The Subordinate Judge
Arakkonam.



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