

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

CRP.(NPD) No.1682 of 2018
and CMP.No.9275 of 2018

M.Suresh

... Petitioner/Petitioner/Defendant

Vs.

R.Jayaraj

... Respondent/Respondent/Plaintiff

Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the fair order and decree dated 23.02.2018 made in I.A.No.394 of 2015 in O.S.No.64 of 2012 on the file of the Subordinate Judge, Harur.

For Petitioner : Mr.G.Arul Murugan
For Respondents : Mr.Pradeep

ORDER

The defendant in O.S.No.64 of 2012 on the file of Sub Court, Harur, has come up with this revision, rejecting his application for condonation of delay of 476 days in seeking to set aside the exparte decree made in I.A.No.394 of 2015.

2. The suit in O.S.No.64 of 2012 was launched by the respondent/plaintiff seeking a money decree on the strength of a promissory note dated 22.11.2011, executed by the defendant. The defendant filed a written statement denying the execution of the promissory note and claimed that the defendant purchased a property belonging to the plaintiff for a sum of Rs.35,000/- and the said amount has also been paid. The plaintiff demanded more money and it was refused. Enraged by the refusal, the plaintiff has created a promissory note and filed the suit. The suit came to be decreed exparte on 10.06.2013.

3. The defendant preferred an application in I.A.No.394 of 2015 on 29.10.2014, seeking condonation of delay of 476 days in filing an application to set aside the exparte decree. According to the defendant, he was affected with jaundice and was taking treatment at Salem. As he has to travel to Salem for taking treatment, he could not attend the Court on 10.06.2013, and further prosecute the matter and co-ordinate with his counsel.

4. This application was resisted by the plaintiff/respondent herein claiming that the reason assigned for the delay would not amount to "sufficient cause" as contemplated under Section 5 of the Limitation Act. It was his further contention that the defendant was not suffering from any sickness and this application has been filed only to drag on the execution of the decree. It was also pointed out that the defendant was served with notice in the execution petition in July 2014, but he has come up with this application to set aside the exparte decree only on 29.10.2014. The learned trial Judge upon consideration of evidence on record, concluded that the petitioner has not made out sufficient cause for condonation of delay. The learned trial Judge also pointed out that the application was not prosecuted with all sincerity and there was a delay of 66 days in representing it. On the above findings, the learned trial Judge dismissed the application. Hence, this Civil Revision Petition.

5. Heard Mr.G.Arulmurugan, learned counsel appearing for the petitioner and Mr.J.Pradeep, learned counsel appearing for the respondent.

6. Mr.G.Arul Murugan, learned counsel appearing for the petitioner would contend that the learned trial Judge was not justified in making a microscopic analysis of the evidence on record and rejecting the cause offered for condonation of delay, pointing out certain minor discrepancies in the evidence of P.W.1 and P.W.2. He would also submit that the Trial Court should have adopted a liberal approach in the matter of condonation of delay, more so, when the petitioner has made out a plausible cause for condonation of delay. He had also drawn the attention of the Court to the judgment of the Hon'ble Supreme Court in Delhi University Vs. Union of India [2019 SCC On line 1634], wherein the Supreme Court has held that a liberal approach is the need of the hour in the matters relating to condonation of delay.

7. Contending contra, Mr.J.Pradeep, learned counsel appearing for the respondent would submit that the application itself is designed to protract the proceedings and to evade execution. Though the notice was served on the petitioner in July 2014, even thereafter, the petitioner did not take steps immediately to file an application for condonation of delay, and the application for condonation of delay was filed only in October 2014, that too with certain discrepancies. This conduct, according to the learned counsel, reveals the total negligence on the part of the petitioner in prosecuting the suit. He would also point out that the evidence of P.W.1 and P.W.2 during cross-examination is contradictory.

8. I have considered the rival submissions. The suit is one for recovery of a sum of Rs.1,63,500/- due on a promissory note. The defense is total denial of execution of the promissory note. Certain related facts are also alleged to buttress the contentions in the written statement of the defendant. Of course, there is a delay of 476 days in filing an application to set aside the exparte decree. The petitioner/defendant has come out with a plausible explanation for the delay. He had also examined himself apart from examining another witness to prove that he was unwell and was suffering from Jaundice. There is a suggestion that notice in the execution petition was served even on July 2014, but the petitioner has not admitted the receipt of the notice in December '2014. The learned trial Judge took note of the fact that there is some delay in representing the petition for condonation of delay and held that the petitioner has been negligent in prosecuting the suit. It is settled law that delay in representation once condoned cannot be put against the parties. As pointed out by the Hon'ble Supreme Court in University of Delhi case referred to supra, the Court has to be liberal in dealing with the matters relating to condonation of delay, unless it is shown that the delay has been caused with a malafide intention. No doubt, the requirement of law is that every day's delay should be condoned, but the Courts have always been in favour of a liberal approach. In District Collector, Land Acquisition, Anantnag Vs.Katiji reported in [(1987) 100 L.W.676], the Hon'ble Supreme Court has pointed out that when technical considerations are pitted against substantial justice cause of substantial justice should be preferred. If the above principles are applied to the case on hand, the trial Court was not right in dismissing the application for condonation of delay, and hence, the order of the trial Court needs to be interfered with.

9. For the foregoing reasons, the Civil Revision Petition is allowed and the order of the trial Court in I.A.No.394 is set aside; the delay of 476 days in filing an application for condonation of delay in setting aside the exparte decree is condoned. The trial Court shall number the application filed under Order IX Rule 13 and dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

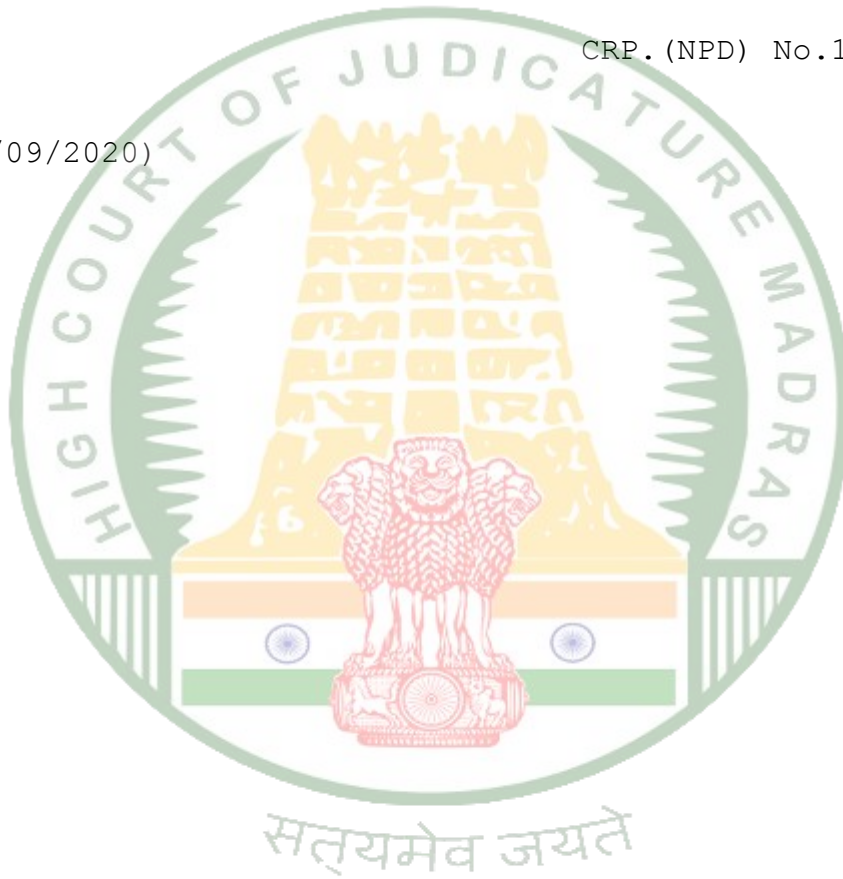
1. The Subordinate Judge,
Harur.

2. The Section Officer
VR Section
High Court, Madras.

+1 cc to Mr.G.Arul Murugan, Advocate Sr.No.264587

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