

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP NPD. No.2493 of 2018
and CMP No.15248 of 2018

Ragu @ Kannan

.. Petitioner

Vs.

The Catholic Syrian Bank Limited,
Rep. By its Branch Manager,
Panamarathupatti, Salem District.

..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final orders dated 05.03.2018 passed in I.A.No.343/2017 in O.S.No.237/2013 on the file of the Principal Sub Judge at Salem.

For Petitioner

: Ms.V.Revathi
for M/s.R.Nalliyappan

For Respondent : No appearance

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is directed against an order of the Trial Court, refusing to condone the delay of 849 days in seeking to set aside the *exparte* decree. The respondent/bank filed the suit for recovery of a sum of Rs.5,32,349/- with subsequent interest.

2. The petitioner filed a written statement denying the allegations in the plaint. It appears that the suit was decreed *exparte* on 27.01.2015. The petitioner, who is the first defendant in the suit filed the instant application seeking to set aside the *exparte* decree. The reason assigned is that he was affected with Jaundice for a considerable period and therefore, he could not meet his counsel or instruct him. It was also stated that he was taking native treatment.

3. This was opposed by the Bank contending that the reasons assigned are not satisfactory and a delay of nearly 2 ½ years cannot be condoned on such flimsy grounds without any material evidence to support them.

4. The Trial Court on a consideration of the rival pleadings accepting the defence dismissed the application.

5. I have heard Ms.V.Revathi, learned counsel appearing for M/s.R.Nalliyappan, for the petitioner. The respondent though served is not appearing either in person or through counsel duly instructed.

6. No doubt, the delay of 849 days can be termed as inordinate. The reason assigned is that the petitioner was suffering from Jaundice and therefore, he could not contact his counsel. The Trial Court had dismissed the application on the ground no evidence has been produced to show that the petitioner was suffering from Jaundice. It is common knowledge that the Jaundice is not treatable under the allopathic system of medicine. Native treatment of indigenous medicine is preferred for treating the said condition. Therefore, it is rather strange that the learned Subordinate Judge should have look for documentary evidence to prove that the petitioner was taking treatment with a native Doctor.

7. The Hon'ble Supreme Court and this Court have been repeatedly reiterating that the Courts must approach these kinds of delays with compassion and there should be a liberal approach. When there is some plausible reason and it is shown that the defendant does not drive any distinct economical advantage by allowing the suit decreed *exparte*, the delay should be condoned and an opportunity should be given to the defendant to contest on merits.

8. In view of the above, I am of the opinion that the learned Subordinate Judge is not right in dismissing the application. Therefore, the Civil Revision Petition is **allowed**, IA No.343 of 2017 will stand allowed, the delay of 849 days is condoned. The Trial Court is directed to number the Application to set aside the *exparte* decree and proceed in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: No
Internet: Yes
Speaking order

To

1. The Principal Sub Judge,
Salem.
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



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