

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.2896 of 2018
and CMP No.16958 of 2018

R.Anbazhagan ... Petitioner

Vs.

Arulmighu Sowri Raja Perumal
Thirukoil, Rep. By its
Executive Officer,
Thirukannapuram Post & Village,
Nagapattinam District. ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, praying to set aside the fair and decreetal order dated
10.04.2018 made in E.A.No.334 of 2017 in E.P.No.1 of 2016 in O.S.No.251
of 2010 on the file of the District Munsif Court at Nagapattinam.

For Petitioner : Mr.Joshua Christie
for M/s.V.Chandrasekaran

For Respondent : Mr.M.S.Palaniswamy

ORDER

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

This Revision has been filed by the petitioner/judgment debtor aggrieved by the dismissal of his application for condonation of delay of 2 days in filing a petition to set aside an *exparte* order passed in an Execution Petition.

2. The respondent/plaintiff obtained a decree for eviction against the petitioner in O.S.No.251 of 2010. The suit was decreed on 23.07.2014. The respondent/plaintiff levied execution in EP No.1 of 2016. The said Execution Petition was posted for counter on 08.12.2016. Since no counter was filed, an *exparte* order came to be passed on 08.12.2016. An Application was filed seeking to set aside the *exparte* order on 10.01.2017 i.e. exactly on the 32nd day. It appears that the application seeking to set aside the *exparte* order was returned by the Court pointing out that it should be accompanied by an application for condonation of delay. An application for condonation of delay of 2 days in filing the application to set aside the

exparte order was filed on 12.04.2017 and both the applications were represented. The application for condonation of delay was numbered as EA No.334 of 2017 and upon notice, the respondent entered appearance and filed a counter without even looking into the affidavit treating it as an application to set aside an *exparte* order dated 08.12.2016. The counter proceeds as if no application for condonation of delay has been filed by the judgment debtor.

3. The Executing Court, however, took up the application for condonation of delay, referred to the fact that the suit has been decreed in 2014 itself overlooking the fact that the execution was levied only in 2016 faulted the petitioner/judgment debtor for delaying the proceedings and dismissed the application for condonation of delay of 2 days in filing an petition to set aside the *exparte* order. Aggrieved, the petitioner has come up with this Civil Revision Petition.

4. I have heard Mr.Joshua Christie, learned counsel appearing for M/s.V.Chandrasekaran, for the petitioner and Mr.M.S.Palaniswamy, learned

counsel appearing for the respondent.

5. Needless to point out that the Trial Court has adopted a rigid and dogmatic approach in considering the question of condonation of delay. The Hon'ble Supreme Court and this Court have repeatedly held that an application for condonation of delay filed either under Section 5 or under Order 41 Rule 3 of the Code of Civil Procedure, need not be filed along with the appeal or the original application. It is always open to the party to file the application subsequently.

6. In this case the delay was only 2 days. Once the Court returned the application filed for setting aside the *exparte* order without an application for condonation of delay, the petitioner has within a reasonable period of three months has filed the application seeking condonation of delay.

7. The Executing Court was not right in faulting the petitioner for the delay. No doubt the suit was decreed in 2014, but the execution proceedings were launched only in January 2016 and immediately after the *exparte* order

within 32 days, the petitioner/judgment debtor has come up with the application to set aside the *exparte* order. I do not see any *mala fide* on the part of the petitioner/judgment debtor in prosecuting the proceeding. Hence, I am unable to subscribe to the views of the Trial Court in dismissing the application. The Civil Revision Petition is **allowed**.

8. The Order dated 10.04.2018 made in EA No.334 of 2017 is set aside, EA No.334 of 2017 will stand allowed. The delay of 2 days in filing the application in seeking to set aside the *exparte* order dated 08.12.2016 will stand condoned. The Trial Court is directed to number the application filed under Order 21 Rule 106 seeking to set aside the *exparte* order and proceed with the same in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

jv

15.09.2020

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Index: No
Internet: Yes
Speaking order

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To

1. The District Munsif,
Nagapattinam.
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



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