

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 853 of 2018
in
C.M.P.No. 4706 of 2018

G.Pitchandi

..Petitioner

Vs.

D.Vijaya

..Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, challenged the fair and decretal order dated 11.08.2017 made in I.A.No. 53 of 2016 in O.S.No. 88 of 2004 on the file of the District Munsif cum Judicial Magistrate, Arcot, Vellore.

For Petitioner : Mrs.R.Sakunthala

For Respondent : Mr.K.G.Senthilkumar

O R D E R

This petition has been filed by the defendant in O.S.No. 88 of 2004, challenging the order dated 11.08.2017 made in I.A.No. 53 of 2016 filed by him seeking to condone the delay of 417 days in filing the application to set aside the exparte decree.

2. According to the defendant, his counsel died during the pendency of the suit and therefore, he was not informed of the passing of the exparte decree. Only on receipt of the notice in E.P.No.30 of 2015, on 26.10.2015, he came to know about the exparte decree that was passed on 04.09.2014.

3. This petition was resisted by the respondent / plaintiff contending that it lacks bonafide and is only an attempt to drag on the proceedings. It was pointed out by the plaintiff / respondent that the suit was decreed exparte atleast three times earlier and exparte decree was set aside upon applications being filed by the defendant. It was also pointed out that the defendant filed an application in I.A.No. 72 of 2005 seeking to send the promisory note to finger print expert and the same was dismissed on 16.11.2005. As against the said order, the

petitioner herein filed an appeal in C.M.A.No. 4 of 2008 which came to be allowed by the lower Appellate Court with the direction to the Trial Court to reconsider the application in I.A.No. 72 of 2005. The said I.A.No. 72 of 2005 came to be dismissed again on 15.07.2013. Thereafter, the suit was posted for cross-examination of P.W.1 and the exparte decree came to be passed on 04.09.2014. Therefore, according to the plaintiff / respondent, this petition lacks bonafide and it has been filed only with a view to drag on the proceedings.

4. I have heard Mrs.R.Sakunthala, learned counsel for the petitioner and Mr.K.G.Senthilkumar, learned counsel for the respondent.

5. The only reason assigned by the petitioner for the delay is that his counsel died and he did not know the result of the suit. The said reason is wholly unbelievable. Admittedly, the counsel for the petitioner Mr.K.M.Natarajan died even on 01.11.2011 thereafter, his son had appeared for the petitioner through out for nearly three years. Therefore, the only reason adduced by the petitioner that he was not informed about the status of the case, since his counsel died turns out to be false.

6. This Court as well as the Hon'ble Supreme Court has held that it is for the litigant to approach the counsel and find out the status of the case. He cannot keep quite for a long period and thereafter, blame the counsel for the delay. The suit is of the year 2004 and it has been successfully dragged on for nearly 16 years. It is rather surprising to find that as against the order dismissing the application seeking the document to be sent for expert opinion, an appeal was filed and the same was entertained and allowed by the Sub-Court directing the Trial Court to reconsider the petition. The petitioner has indulged in delaying tactics right through the proceedings. I do not think the petitioner has explained the delay satisfactorily in order to get the delay condoned. The learned Trial Judge has considered the averments in the affidavit filed in support of the petition for condonation of delay and has found that the petitioner has not satisfactorily explained the delay, I do not see any reason to interfere with the conclusion reached by the court below. Hence, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

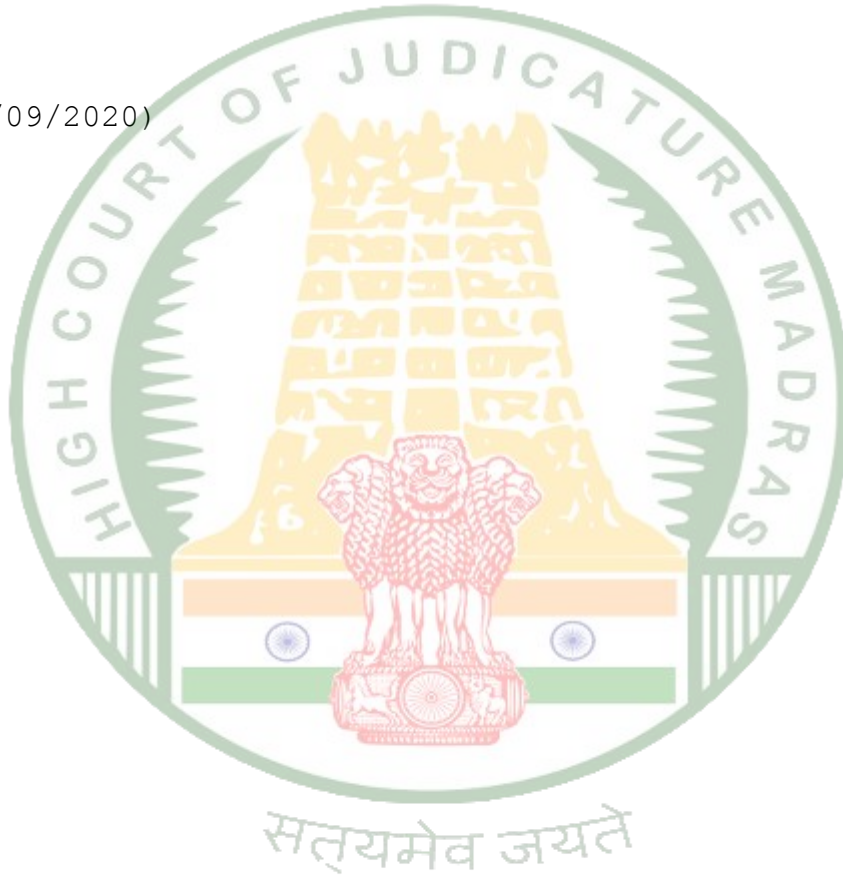
To:-

1. The District Munsif cum Judicial Magistrate,
Arcot, Vellore.

+1cc to Mr.K.G.Senthilkumar, Advocate Sr.No.25085

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in
C.M.P.No. 4706 of 2018

ev(co)
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