

A.No.9679 of 2019
in C.S.No.401 of 2014

P.T.Asha,J.

The above application has been filed to condone the delay of 514 days in setting aside the *exparte* decree dated 07.03.2018 made in C.S.No.401 of 2014 and thereafter, set aside the *exparte* decree dated 07.03.2018.

2. In the affidavit filed in support of the application to condone the delay, the Learned Counsel for the applicant would submit that, his father was initially handling the entire legal proceedings and thereafter, he had certain health complications and being the only son, the deponent to the affidavit and the proprietor of the applicant/defendant concern had to take care of the business as well as his father health. In the process, he was unable to focus on the case. In fact, his father while in good health, had taken change of vakalat from the original counsel and had misplaced the bundle. He was not able to recollect as to where kept the papers. Thereafter, his father underwent a surgery and was ultimately discharged on 07.08.2017. He was advised to take bed rest for two months and thereafter, he was advised to take light duties for the period of one year.

3. Meanwhile, the petitioner has received notice in the Execution Proceedings in E.P.No.41 of 2019 and it was then that he got in touch with the present counsel, who came to learn that the petitioner had been set *exparte*. The Execution proceedings had also been filed for the arrest of the petitioner. Immediately, the application had been filed. However, in the interregnum, a delay of 514 days had occurred. The Learned Counsel for the applicant would contend that the delay was neither wilful nor wanton. The only reasons that has been stated in the affidavit filed in support of the application.

4. The Learned Counsel for the respondent herein has filed counter affidavit denying the contention of the applicant stating that, the only attempt on the part of the applicant/defendant was to protract the proceedings. The Learned Counsel on either side has reiterated the contention pleaded by them in their affidavit and in the counter affidavit respectively.

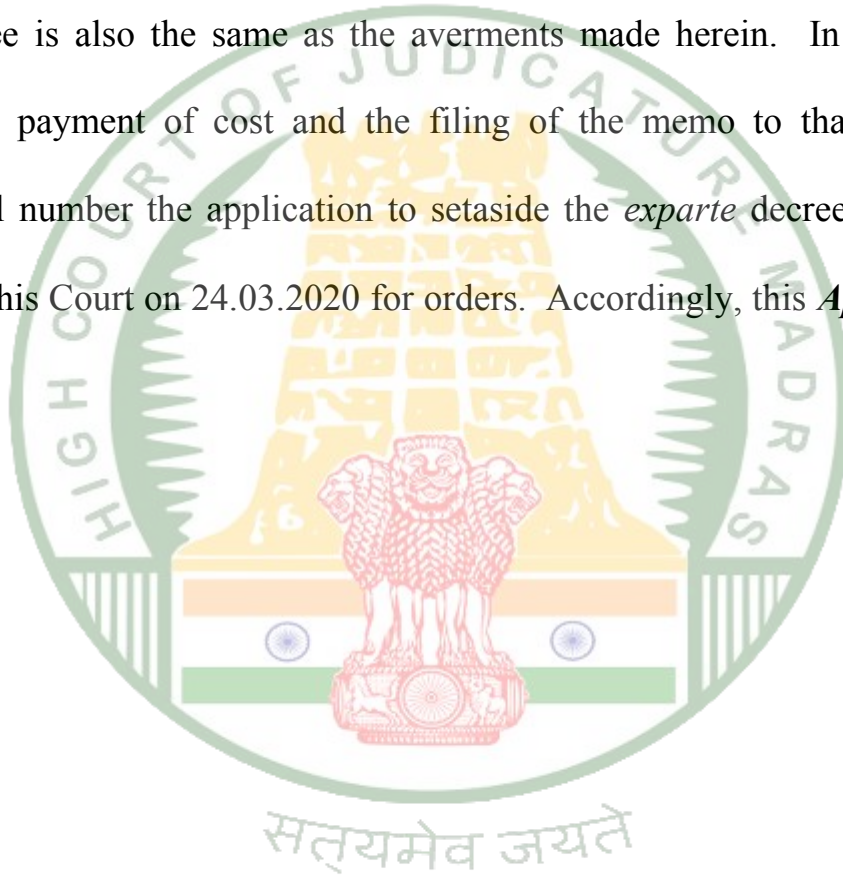
5. Heard the respective counsels and perused the records.

6. The affidavit filed in support of the application to condone the delay shows sufficient cause for the delay. It is further to be noted that the defendant has already filed the written statement prior to being set *exparte*. He has filed a counter claim. In the above said circumstances, I am of the view that since

sufficient cause has been shown, the delay has to be condoned. However, considering the fact that, the delay is nearly 514 days, the same shall be condoned on condition that, the applicant shall pay a sum of Rs.5,000/- to the counsel for the respondent on or before 19.03.2020. The reasons given for setting aside the *exparte* decree is also the same as the averments made herein. In view of the same, on the payment of cost and the filing of the memo to that effect, the Registry shall number the application to set aside the *exparte* decree and list the same before this Court on 24.03.2020 for orders. Accordingly, this ***Application is Allowed.***

bsm

16.03.2020



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