

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition No.4259 of 2017

M/s.TakoMega Constructions
Rep. by its owner
Mr.Yong Cheori Kim
S/o.Yung Soo Kim
No.104, SPH Road
Pollivakkam Village
Thiruvallur District

..Petitioner/ Defendant

Vs

M/s.Bhagwandas Metals Ltd
Rep. by its Authorized Person
Mr.Saravanan
Authorization by Power of Attorney
New No.54, Old No.61,
Sembudoss Street
Chennai-600 001

..Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.10.2017 passed in I.A.No.9760 of 2016 in O.S.No.6161 of 2013 on the file of the XV Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.L.Sudarsanam

For Respondent : Mr.A.Thirumaran

ORDER

The revision petitioner herein is the defendant in O.S.No.6161 of 2013. The respondent/plaintiff filed suit in O.S.No.6161 of 2013 on the file of City Civil Court, Chennai. The said suit was decreed as exparte against the petitioner. The respondent/plaintiff filed E.P.No.7 of 2016 on the file of Sub Court, Thiruvallur, on 04.06.2016. Since the suit was decreed exparte against the petitioner, the petitioner/defendant has filed petition in I.A.No.9760 of 2016 under Section 5 of the Limitation Act read with Section 151 of CPC to condone the delay of 285 days in taking steps to set aside the exparte decree. The said petition was dismissed by the trial court on 25.10.2017. Challenging the said order passed in I.A.No.9760 of 2016 by the XV Assistant Judge, City Civil Court, the present Civil Revision has been filed before this court.

2. According to the Revision petitioner, the respondent/Plaintiff, by suppressing the material facts, had filed the suit for recovery of money from the petitioner. The petitioner was not aware of the status of the suit and only after receipt of notice issued in E.P.No.7 of 2016 filed by the respondent, in the Sub Court, Thiruvallur, for execution of the decree, the petitioner

contacted his lawyer in Tiruvallur, and as per the advice given by the lawyer, he filed petition to set aside the exparte decree along with petition to condone the delay of 285 days. It is the contention of the counsel for the petitioner that the petitioner was not aware of the exparte decree passed against him and he has to be given opportunity to defend the case.

3. According to the respondent, the petitioner entered appearance in the suit through counsel and also filed written statement and he participated in the proceedings after filing written statement. Issues were framed and the plaintiff was examined as P.W.1. Inspite of several opportunities were given to the Revision Petitioner to cross examine, since they have not cross examined the Plaintiff side witness even after five times, the revision petitioner herein was remained exparte and exparte decree was passed. The petitioner was aware of the proceedings and even the petitioner has not stated that he contacted his counsel and his counsel has not informed about the proceedings to him. Even assuming that his counsel has not informed, a diligent litigant should follow the case and since the petitioner has not followed the case and simply kept quiet, after decree was passed, E.P.was filed, thereafter, E.P. notice was also served on him. The revision petitioner issued three cheques for the decreetal amount, which were dishonoured, for

which, the respondent/plaintiff filed petition u/s.138 of N.I.Act, and the same was pending. Therefore, the attitude of the petitioner is that in the beginning, he participated in the suit and not followed the suit and after passing of the decree, E.P was filed; in E.P, he has issued the cheques and not honoured the cheques. But thereafter, petition was filed in I.A.No.9760 of 2016 to condone the delay in filing the petition to set aside the exparte decree, which has been filed only to protract the decree and not allowing the decree holder to enjoy the fruits of the decree.

4. Heard the learned counsel on both sides and perused the records.

5. Admittedly, the respondent/plaintiff filed the suit against the Revision Petitioner in O.S.No.6161 of 2013 for recovery of money in which the petitioner appeared through counsel and filed written statement. After filing the written statement, the trial court framed the issues and the trial had commenced. The respondent was examined as P.W.1. Proof affidavit was filed and posted for cross examination. Proof affidavit was filed on 28.04.2015 and documents was marked on the same day. The case was posted on 10.06.2015, 19.06.2015, 25.06.2015, 04.07.2015, 10.07.2015, 15.07.2015, 22.07.2015, 27.07.2015, 28.07.2015, 01.08.2015, 05.08.2015

10.08.2015, 14.08.2015. Even after giving several opportunities, the Revision Petitioner has not contested the case or examined any witness on their side and therefore, judgment was passed on 20.8.2015. The trial court has elaborately discussed on all the details of proceedings of trial and also pointed out that the petitioner has not given any reason why he has not followed the case and in the petition to condone the delay, he has not specifically stated that his counsel has failed to inform him about the hearing dates. Even though the counsel had not informed the petitioner/defendant regarding the status of case, the petitioner appeared before the court and also filed the written statement and therefore, he has to follow up the case, but after passing of the decree, when the E.P., notice was served, he appeared through counsel and gave cheques for discharge of money. Therefore, the reasons stated in the affidavit filed in support of the petition to set aside the exparte decree praying to condone the delay of 285 days is not satisfactory. Length of the delay is not the matter but the reason stated therein should be satisfying to the court. Delay can be condoned, if there is sufficient cause. In this case, the petitioner has not explained any reason for the delay of 285 days. After several hearings, when the matter was posted, neither the petitioner nor the counsel for the petitioner appeared and he has not specifically stated or given any reason except stating that he was not aware of

the hearing dates. It is the fault of the petitioner and he has to vigilantly watch the hearing and follow up the case, but he failed to do so. Therefore, when the trial court has discussed elaborately about the various decisions of this court and also the Honourable Supreme Court and came to a finding that the court was not convinced with the reasons assigned for the delay, it is very clear that the trial court had followed the proposition of law that condoning the delay is only the discretionary power of the court. Unless the court is satisfied and convinced of the reasons for the delay assigned by the petitioner, it may not condone the delay and it is the discretionary power of court to be exercised and unless there is arbitrariness found in the order of the trial court, the revision court need not interfere with the order.

6. In view of the above reasonings, this court is not inclined to interfere with the order of the trial court. There is no perversity in the order of the trial court. Therefore, the revision is devoid of merits and accordingly, the Civil Revision Petition is dismissed. No costs.

27.07.2020

Index: Yes/No
Internet: Yes/No
nvsri

To

- 1.The XV Assistant City Civil Court, Chennai.
- 2.The Section Officer, V.R. Section, High Court, Madras

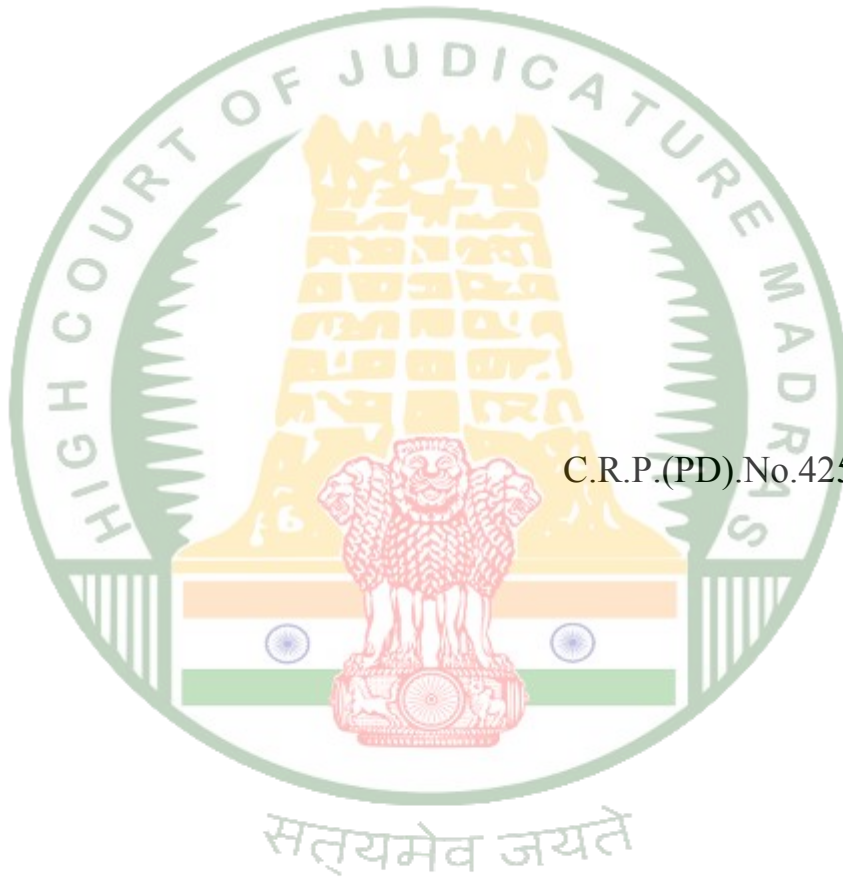


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P.VELMURUGAN,J.

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