

A.No.9148 of 2019
in
C.S.No.152 of 2014

SENTHILKUMAR RAMAMOORTHY, J.

This application has been filed to condone the delay of 209 days in filing the application to set aside the ex-parte Judgement and Decree dated 08.05.2017.

2. I heard the learned counsel for the applicant and the defendants.

3. The learned counsel for the applicant/defendant submits that the suit summons was not served on the applicant and that the applicant became aware of the proceedings only on 16.10.2019. He further submitted that the suit is based on a promissory note and that the applicant has a strong defence in the suit and therefore, the applicant should be permitted to contest the suit on merits.

4. In response, the learned counsel for the respondent/plaintiff submits that the suit summons was served on the applicant/defendant and the same were returned with the following endorsements (1) intimation delivered, (2) left and (3) unclaimed. Based on that, thereafter, substituted service was also taken by way of publication, both in a Tamil and English daily. He further submits that the actual delay is 893 days and not 209 days. For all these reasons he submits that sufficient cause is not established.

SENTHILKUMAR RAMAMOORTHY, J.

vsn

5.I have considered the submissions of the learned counsel for the respective parties and also examined the affidavit and counter affidavit in this case. Upon examining the above, it appears that summons and notices in respect of these proceedings were despatched to the applicant and they have been returned unclaimed, intimation delivered and left. In this regard, the learned counsel for the applicant submits that the applicant is carrying on the business of running a fuel station and therefore, the intimation delivery may have been made on the staff of the applicant and it was not brought to the applicant's knowledge. Keeping in mind all these facts, I am of the view that the application is liable to be allowed albeit subject to the payment of cost.

6.Accordingly, this application is allowed and the delay of 209 days in filing the application is condoned, subject to the payment of a sum of Rs.10,000/- as cost to the respondent/plaintiff within a period of two weeks from the date of receipt of a copy of this order.

13.01.2020

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