



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2020

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THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (NPD) (MD) No.1417 of 2015

Ismail Kunju,
Proprietor,
M/s.Ismail Traders,
Manjanadu House,
Avaneeswaram Railway Station Post Office,
Kollam District,
Kerala State.

: Petitioner/Petitioner/Defendant

.. Vs ..

Tamil Nadu Cements Corporation Ltd.,
L.L.A. Building No.735, Annasalai,
Chennai and one of its Unit at
Alangulam rep. by its
General Manager.

: Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to allow this Civil Revision Petition by setting aside the order and decree made in I.A.No.155 of 2009 in O.S.No.90 of 2003 dated 31.08.2010 on the file of the Sub Court, Sivakasi.

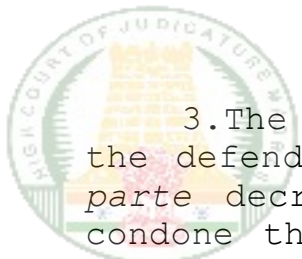
For Petitioners : Mr.M.Thirunavukkarasu
For Respondent : Mr.A.Sivaji

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ORDER

This Civil Revision Petition is directed against the order dismissing the petition to condone the inordinate delay of 2154 days in filing a petition to set aside the *ex parte* decree in the suit in O.S.No.90 of 2003 on the file of the Sub Court, Sivakasi.

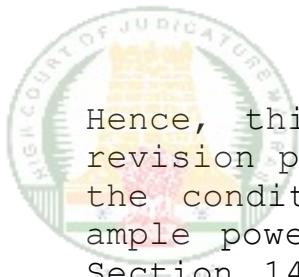
2.The respondent herein, Tamil Nadu Cements Corporation Limited, which is a company registered under the Companies Act, has filed the suit in O.S.No.90 of 2003 for recovery of a sum of Rs.17,08,794.78 which amount represents the value of goods supplied by the respondent to the petitioner who is a dealer.



3.The suit was decreed *ex parte* on 25.07.2003 after setting the defendant/revision petitioner *ex parte*. To set aside the *ex parte* decree, a petition was filed along with the petition to condone the delay in I.A.No.155 of 2009. The said petition was allowed on condition that the revision petitioner should pay the cost of Rs.1,500/- to the respondent on or before 30.08.2010. However, the cost was not paid within the time . Therefore, the petition to condone the delay in filing the petition to set aside the *ex parte* decree was dismissed on 31.08.2010. The lower Court, however, dismissed the petition to set aside the *ex parte* decree in I.A.No.155 of 2009 only on the ground the no petition under Section 5 of the Limitation Act is filed to condone the delay. Aggrieved by the order of the learned Sub Judge, Sivakasi, the above Civil Revision Petition is filed.

4.The learned Counsel appearing for the petitioner submitted that though the *ex parte* decree was passed on 04.08.2003, the petitioner was not aware of the *ex parte* decree till he received the summon in the execution proceedings. It is stated that only on account of lack of knowledge, the delay had occurred. Though the said petition was allowed on payment of cost, it was again dismissed for non-payment of cost. This Court finds that the conduct of the revision petitioner reveals that every attempt is made to drag on the proceedings even though the suit was filed in 2003. The delay of 2154 days in filing the petition to set aside the *ex parte* decree was not supported by valid reasons. However, the lower Court was lenient in exercising its discretion to condone such inordinate and huge delay of 2154 days with an object to give an opportunity to the revision petitioner to contest the suit on merits. However, such fair opportunity was not properly utilised by the revision petitioner and he failed to pay the cost within the time stipulated. Even thereafter the revision petitioner was not diligent in prosecuting the matter. The order in I.A.No.155 of 2009 in O.S.No.90 of 2003 was again challenged before this Court with a huge delay. Having regard to the conduct of the revision petitioner, the learned Counsel appearing for the respondent submitted that this is not a case where any indulgence can be shown to the revision petitioner. The learned Counsel appearing for the respondent further stated that serious prejudice will be caused to the respondent in case the Civil Revision Petition is allowed.

5.This Court carefully considered the respective submissions of the Counsels on either side. Since the lower Court has already exercised its discretion and condoned the delay of 2154 days in filing the petition to set aside the *ex parte* decree, the order of the lower Court should be respected in letter and spirit. In this Civil Revision Petition, the petitioner has given some reasons that he could not deposit the amount as per the conditional order.



Hence, this Court is more concerned with the issue whether the revision petitioner had acted with due diligence in complying with the conditional order. It is well settled that the Court has ample power to exercise its discretion to extend the time under Section 147 or Section 151 C.P.C. However, without hearing the revision petitioner, the lower Court has dismissed the petition after recording the fact that the condition imposed was not complied with by the revision petitioner. The condition is only payment of cost within stipulated time and this can be extended and the time given for payment of cost also should be extended if there is any cause for undue delay.

6.Serious irregularity is also notified by this Court. The petition and order in I.A.No.155 of 2009 in O.S.No.90 of 2003 dated 31.08.2010 is found in page 28 of the typed set of papers. Fair and decretal order is also found in page 31 of the typed set of papers. In the order at page No.28, the lower Court has treated the petition in I.A.No.155 of 2009 as one to condone the delay of 2154 days in filing the petition to set aside the ex parte decree. By order dated 03.08.2010, the petition to condone the delay was allowed on payment of Rs.1,500/- as cost. On 31.08.2010, the petition was dismissed for non-payment of cost. However, in the fair and decretal order, the petition was stated to be dismissed for non-payment of batta.

7.In this case, the suit was filed in 2003 and the plaintiff in the suit is unable to recover substantial amount even after spending 17 years in Court. The revision petitioner has no valid explanation for non-payment of cost within the time given by the lower Court. Taking into consideration the fact that the petitioner should be given an opportunity to contest the matter on merits and serious prejudice is likely to be caused to the respondent/plaintiff and also considering the inconsistencies in the decretal order in the interest of justice, this Court is inclined to allow this Civil Revision Petition and accordingly, this Civil Revision Petition is allowed on terms. The order dated 31.08.2010 passed in I.A.No.155 of 2009 in O.S.No.90 of 2003 is set aside and the delay stands condoned and the petition to condone the delay of 2154 days in filing the petition to set aside the ex parte decree is allowed subject to the following terms. Since the suit is for recover of money and the respondent/decreed holder has not seen the colour of the coin for a long time, this Court directs the petitioner to deposit 25% of the decree amount to the credit of the suit in O.S.No.90 of 2003 pending on the file of the Sub Court, Sivakasi, within a period of eight months from the date of receipt of a copy of this order. The petitioner shall pay a sum of Rs.2,500/- as costs to the respondent within four weeks from the date of receipt of copy of this order. If the cost amount or the deposit amount is not paid within the time, the



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revision petition stands dismissed without further reference to this Court. No costs.

Sd/-

Assistant Registrar (Crl. Side))

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Sub Assistant Registrar(CS)

To

The Subordinate Judge,
Sivakasi.

+1 CC to Mr.A. SIVAJI, Advocate (SR-13391[F] dated 31/07/2020)

C.R.P (NPD) (MD) No.1417 of 2015
30.07.2020

SRM

AE/ (26.08.2020) 4P 3C