



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2020

CORAM

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

C.R.P (NPD) (MD) No.56 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

C.Silambarasan : Petitioner/Petitioner/Defendant

.. Vs ..

V.Ponnuthai : Respondent/Respondent/Plaintiff

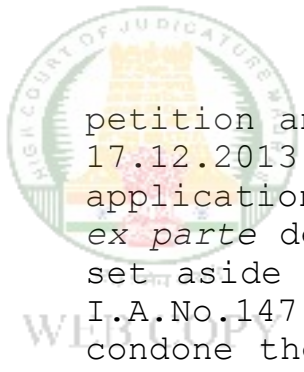
PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair order and decretal order dated 05.11.2014 passed in I.A.No.147 of 2014 in O.S.No.520 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Vadipatti, Madurai District and allow the above Civil Revision Petition.

For Petitioner : Mr.R.Lakshmanan  
For Respondent : Mr.R.Senthilkumar

**ORDER**

This Civil Revision Petition is directed against the order made in I.A.No.147 of 2014 dismissing the petition filed by the revision petitioner to condone the delay of 207 days in filing the petition to set aside the *ex parte* decree in O.S.No.520 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti.

2.The respondent herein filed a suit in O.S.No.267 of 2005 originally before the District Munsif Court, Madurai Taluk. The said suit was subsequently transferred to the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti, and re-numbered as O.S.No.520 of 2008. The suit is for recovery of a sum of Rs.40,350/- and interest for the principal amount of Rs.30,000/- at the rate of 12% per annum. The suit is based on the promissory note stated to have been executed by the defendant in favour of the plaintiff for a sum of Rs.30,000/-. It is admitted that earlier the revision petitioner was set *ex parte*. The suit was again posted for trial. Even for the second time the revision petitioner failed to appear on 11.06.2013 when the matter was posted for trial. Thereafter an *ex parte* decree was passed on 16.07.2013. Thereafter, the respondent filed an execution

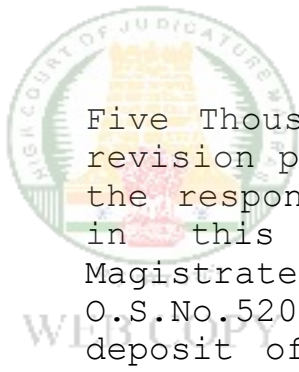


petition and summons was also issued to the revision petitioner on 17.12.2013. Even thereafter, with a delay, the present application was filed by the revision petitioner to set aside the *ex parte* decree and to condone the delay in filing the petition to set aside the *ex parte* decree. The interlocutory application in I.A.No.147 of 2014 is under Section 5 of the Limitation Act to condone the delay of 207 days in filing the petition to set aside the *ex parte* decree.

3.The revision petitioner in the affidavit filed in support of the petition to condone the delay, stated that he was suffering from jaundice during the relevant point of time and that therefore, he could not appear on the date when the suit was posted for trial. It is to be seen that the revision petitioner did not appear when the matter was posted for evidence of defendant. Even after the evidence on the side of revision petitioner/defendant was closed on 09.07.2013 and the matter was posted for argument, there is no representation for the revision petitioner before the lower Court. After giving sufficient opportunity, the lower Court set the revision petitioner *ex parte* and thereafter, passed the *ex parte* decree. Though the petitioner has not given any satisfactory or sufficient reasons to condone the delay, the learned Counsel appearing for the revision petitioner pleaded that the revision petitioner is poor and that he did not have proper medical attendance and care at the time when he was suffering from jaundice. He further stated that due to medical reasons, revision petitioner could not contact his counsel originally engaged by him. Finally, the learned Counsel appearing for the petitioner wanted this Court to give one more opportunity to the petitioner for contesting the suit on merits.

4.Though this Court is not fully convinced with the reasons stated by the petitioner before the lower Court for the delay, having regard to the facts and circumstances of this case and the fact that the petitioner is from rural area, is inclined to give one more opportunity. However, the suit in this case is filed in 2005 for recovery of money based on a promissory note. It is admitted that for conducting the suit, the respondent has already been put to lot of inconvenience and that even after 15 years, the respondent is unable to get a disposal on merits. Since the *ex parte* decree was passed on two occasions, the petitioner should be put on terms to compensate the respondent.

5.As a result, this Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) to the respondent or to the respondent's counsel within a period of four weeks from the date of receipt of a copy of this order. Apart from that, the revision petitioner shall also deposit a sum of Rs.5,000/- (Rupees



Five Thousand only) to the credit of the suit. In default, the revision petition shall stand dismissed. Upon payment of money to the respondent or respondent's counsel as directed by this Court in this order, the learned District Munsif-cum-Judicial Magistrate, Vadipatti is directed to dispose of the suit in O.S.No.520 of 2008 within a period of eight weeks from the date of deposit of the amount as directed by this Court in this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

1. The District Munsif-cum-Judicial Magistrate,  
Vadipatti, Madurai District.

2. The Section Officer,V.R.Section,  
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.R.LAKSHMANAN, Advocate ( SR-13229[F] dated 24/07/2020

**C.R.P (NPD) (MD) No. 56 of 2015**  
**23.07.2020**

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