



CRP (PD) No.28 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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and CMP No.140 of 2020

D.Govindasamy

... Petitioner

Vs

S.Kandasamy

... Respondent

Prayer: The Civil Revision petition filed under Article 115 of Code of Civil Procedure, against the fair and final order, dated 28.11.2018 in I.A.No.624 of 2015 in O.S.No.512 of 2009 on the file of the Subordinate Court, Perundurai, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.S.Kaithamalai kumaran

ORDER

This Revision is directed against an order of the trial Court, refusing to condone the delay of 1482 days in filing the petition to set aside the exparte decree that was passed in the suit in O.S.No.512 of 2009 on the



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file of the Sub Court, Perundurai on 05.07.2011. The said suit was filed by the respondent herein seeking recovery of money.

2. The petitioner filed a written statement disputing the signature in the suit promissory note and also took steps to have the signature verified by the expert. However, subsequently, the petitioner did not chose to appear and did not cross examine the plaintiff who was examined as P.W.1. Recording the same, the suit was decreed exparte on 05.07.2011. The petitioner has now come up with this application seeking condonation of delay of 1482 days.

3. According to the petitioner, his erstwhile counsel had informed him that he would file a revision against the dismissal of the I.A.No.95 of 2011 filed by the him seeking amendment of the written statement. Believing that he would get information from the counsel, he did not contact the counsel and therefore the exparte decree came to be passed on 05.07.2011 and he came to know about the exparte decree only on service of notice in the Execution petition filed by the respondent herein in E.P.No.56



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of 2014. Claiming that, the delay neither wilful nor wanton, the petitioner sought for condonation of delay of 1482 days.

4. This application was resisted by the respondent contending that the reasons assigned are not true. It was also pointed out that the petitioner was served with the Execution petition on 10.11.2014, he filed a counter and contested the Execution proceedings. However, the application for condonation of delay was eventually filed on 27.07.2015 i.e., almost 11 months after service of notice in the Execution Petition. There is no reason for the said delay.

5. The learned trial Judge considered the reasons assigned for the delay and concluded that the petitioner has not assigned sufficient cause for condonation of such a long delay. The learned trial Judge also found that the petitioner is guilty of negligence and laches. On the said findings, the learned trial Judge dismissed the application for condonation of delay.



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6. I have heard Mr.M.Guruprasad, learned counsel for the petitioner and Mr.S.Kaithamalai kumaran, learned counsel appearing for the respondent.

7. Mr.M.Guruprasad, learned counsel for the petitioner would vehemently contend that in view of the defence taken regarding the execution of the promissory note, he should be given an opportunity to contest the suit.

8. The exparte decree came to be passed on 05.07.2011. The trial Court even before passing the exparte decree has observed that the counsel for the petitioner/defendant present in Court and he has not ready to cross examine P.W.1. Therefore, the counsel for the petitioner was very much aware of the exparte decree, dated 05.07.2011.

9. It is also the claim of the petitioner that he was not informed by the counsel. I am unable to accept the said statement. In fact, the petitioner



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has, through the said counsel filed an application for having the application referred to expert as well as another application for amendment of the written statement which came to be dismissed on 14.03.2011. Therefore, I am unable to accept the reasons assigned in the affidavit filed in support of the application that the counsel did not inform him about the exparte decree. Even otherwise, there is no acceptable reason for the delay between the date of service in the Execution petition and date of filing of the petition under Section 5 of the Limitation Act, which is about 11 months later. The trial Court was justified in concluding that the petitioner is guilty of negligence and laches. I therefore see no material irregularity in order to interfere with the same.

10. Mr.M.Guruprasad, learned counsel appearing for the petitioner would contend that the decree passed in the instant case does not satisfy the requirements of the Order XX Rule 4 and 5 of the Code of Civil Procedure.



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11. I am unable to accept the contention of the learned counsel. A perusal of the Judgment would show that the learned trial Judge has considered the evidence and also quoted the absence of cross examination of P.W.1. Hence, I find that the Judgment and decree of the trial Court discloses the application of mind on the part of the trial Court before decreeing the suit. The revision therefore fails and it is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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vum

Index: Yes/No

Speaking order / Non speaking order

To:

The Subordinate Court, Perundurai, Erode.



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