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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (NPD) NO.367 OF 2021

AND

C.M.P.NO.3092 OF 2021

Manoharan

...Petitioner

Vs

Manickam

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order of District Court, Dharmapuri, dated 04.11.2020 in I.A.No.1 of 2019 in O.S.No.65 of 2018.

For Petitioner : Mr.P.Valliappan for
PV Law Associates

O R D E R

The limited prayer sought for in the present petition is to set aside the fair and decretal order of the District Court, Dharmapuri, dated 04.11.2020 in I.A.No.1 of 2019 in O.S.No.65 of 2018.

2. The learned counsel for the petitioner submitted that the order of the learned District Judge in dismissing the application seeking to condone the delay of 83 days to set aside the ex-parte decree, is patently erroneous, unjust and liable to be reversed. The learned counsel further submitted that the learned District Judge failed to see that Courts are required to liberally condone the delay and the Court below committed a



grave error in refusing to condone the delay of 83 days by adopting a rigid view. The learned District Judge failed to see that non-filing of written statement was only due to bona-fide difficulty faced by the petitioner in acquiring certain documents, which were necessary for filing of the written statement and also due to his brief illness. Further, the learned District Judge, by being so harsh in condoning the short delay of 83 days, has caused great injustice to the petitioner, inasmuch as valuable rights of the petitioner are involved in the suit, which is filed for declaration and recovery of possession. The learned District Judge failed to see that the petitioner has a good case in the suit and that he should be given one more opportunity to contest the case on merits. It is stated that learned District Judge failed to see that the petitioner has given sufficient reasons for the delay in filing the application to set aside the ex-parte decree. Hence, the learned counsel for the petitioner seeks to allow this petition by setting aside the impugned order.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. This Court is of the view that the delay has to be condoned, if the reasons are bona-fide and rightly stated by the parties to the satisfaction of the Court. In this case, the petitioner has adduced proper reason for the delay and the delay is neither willful nor wanton. It is only due to brief illness and facing some difficulty in acquiring certain documents. Hence, this Court is of the view that the petitioner is entitled for condonation of delay in filing the petition seeking to set aside the ex-parte decree order.

5. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court reported in [1988 (7) SCC 123 (N.Balakrishnan Vs. M.Krishnamurthy)] , relevant portion of which reads as follows:

'9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is



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the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory...''

6. Accordingly, in view of the above decision of the Hon'ble Supreme Court and this Court, on being satisfied with the reasons explained by the petitioner for the delay, the Civil Revision Petition is allowed. The delay of 83 days in filing the petition seeking to set aside the ex-parte decree is condoned. The trial Court is directed to number the petition seeking to set aside the ex-parte decree and dispose of the same on merits in accordance with law as expeditious. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

sbn

To

The District Judge,
Dharmapuri.

+1cc to M/s.P.Valliappan, Advocate, S.R.No.12390

C.R.P. (NPD) No.367 of 2021
and
C.M.P.No.3092 of 2021

KSM(CO)
RLP(22/11/2021)