

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.2084 of 2021

and

C.MP.No.15858 of 2021

John Basha

... Petitioner

Vs.

Munnusamy

... Respondent

Civil Revision Petition is filed under Article 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A. No.863 of 2019 in O.S. No.245 of 2012 dated 09.11.2020, on the file of the Principal District Court, Thiruvannamalai.

For Petitioners सत्यमेव जयते : Mr.V.Murali

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O R D E R

This petition is filed to set aside the fair and decreetal order passed in I.A. No.863 of 2019 in O.S. No.245 of 2012 dated 09.11.2020, on the file of the Principal District Court, Thiruvannamalai.

2. The respondent filed a suit for recovery of a sum of Rs.40,740,00/- with an interest at 12% per annum. The suit was filed based on a promissory note executed by the petitioner. The petitioner did not appear before the Court below when the matter was posted for hearing on 10.04.2013 and therefore, the petitioner was set ex-parte and ex-parte decree and judgment was passed in O.S.No.245 of 2012 on the file of the learned Principal District Munsif, Tiruvannamalai on 10.04.2013.

3. The learned counsel for the petitioner has submitted that the petitioner was suffering from Jaundice and he had been taken treatment with native doctor in his home town for six years. He met his advocate after six years and came to know that the suit was decreed as ex-parte and therefore, he filed a petition under Section 5 of Limitation of Act, for condoning the delay of 2178 days in filing the petition to set aside the ex-parte decree. The submission of the learned counsel for the petitioner that the reason for delay is that the petitioner was suffering from jaundice and he had been taken treatment for jaundice under a native doctor in his home town. Therefore, he prayed to set aside the order of the learned trial Judge, and for allowing the petition for condoning the delay.

4.Considered the submission made by the learned counsel for the petitioner and perused the materials available on record.

5. Perusal of the order of the learned trial Judge reveals that both the petitioner and the respondent were examined in the application filed to condone the delay as P.W.1 and R.W.1. On the basis of the evidence, the learned trial Judge found that the petitioner participated in the execution proceedings initiated against the petitioner, in pursuance of the decree and that the petitioner had not produced any document to show that he was suffering from Jaundice and was taking treatment. On these reasons, the learned trial Judge, dismissed the petition in I.A.No.863 of 2019 in O.S.No.245 of 2012.

6.The suit was filed based on the promissory note and ex-parte order was passed on 10.04.2013. The petition to condone the delay in filing the petition to set aside the ex-parte decree was filed only on 03.04.2019, i.e., after six years of passing the ex-parte decree. The delay is huge and unexplainable, coupled with the fact that the petitioner has not produced any document to show that he was suffering from jaundice and taken treatment for six years. It is also found from the order of the learned trial Judge that the petitioner had participated in the execution proceedings. Therefore, this Court finds no reason to interfere with the order of the learned trial Judge.

G.CHANDRASEKHARAN. J.,

vsn

7.The order of the learned trial Judge in dismissing the petition filed to condone the delay of 2178 days is confirmed.

8.Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2021

Index: Yes / No
Speaking order / Non speaking order
vsn

Copy To:

The Principal District Judge,

Thiruvannamalai

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