

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.2424 of 2019

and C.M.P. No.15857 of 2019

Krishnamoorthy

...

Petitioner /
Defendant

versus

Ganesan

...

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 27.02.2019 made in I.A.No.236 of 2018 in O.S.No.40 of 2017 on the file of the learned Subordinate Judge, Neyveli.

For Petitioner : Mr.P.Paramasivadosh
For Respondent : Mr.Rajesh Babu

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ORDER

This Civil Revision Petition is filed challenging the order dated 27.02.2019 passed by the learned Subordinate Judge, Neyveli in I.A.No.236 of 2018 in O.S.No.40 of 2017.

2. The respondent filed O.S.No.40 of 2017 claiming a sum of Rs.2,56,867/- and interest @ 12% on the principal amount of Rs.2,00,000/- on the basis of promissory note said to have been executed by the petitioner in favour of the respondent. The petitioner was set *ex parte* for not filing the written statement. The petitioner filed I.A.No.236 of 2018 under Section 5 of the Limitation Act, to condone the delay of 268 days in filing the petition to set aside the *ex parte* decree. This petition came to be dismissed. Against the said dismissal order, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that, the petitioner has not executed the suit promissory note. He borrowed money from some third party and that documents signed by him at the time of

borrowing money from third party, is now being used by the respondent for creating suit promissory note and for filing of the suit. Therefore, he prayed for setting aside the order of the learned Subordinate Judge, Neyveli and for allowing the delay condonation petition.

4. In response, the learned counsel for the respondent submitted that, the petitioner stated in his affidavit that, "the suit promissory note was forged. His counsel has to get true facts about the suit promissory note. He was not able to gather information and file written statement in time". He further submitted that, during the course of cross examination of P.W.1, the petitioner herein admitted that, the documents filed as Ex.P.1 to Ex.P.7 were available in his hands and there was no delay caused in securing these documents. It is also his submission that, the claim made in the affidavit that, there was a delay in securing these documents, is not correct. Relying on these admissions, learned counsel for the respondent submitted that it is seen from this particular evidence of the petitioner that, the reason stated by him in the petition filed for condonation of delay and in the proof affidavit for the delay in filing the petition, is not true. Therefore,

the learned Subordinate Judge, Neyveli has rightly dismissed the petition and he prayed for dismissal of this petition and confirming the order.

5. Considered the rival submissions and perused the records.

6. As narrated above, the suit was filed for recovery of money. The petitioner has not filed written statement and therefore, he was set *ex parte*. In the petition filed for condoning the delay, it is claimed that the Advocate wanted to gather true facts about the promissory note and therefore, the written statement could not be filed in time. This is not a valid reason for not filing this document in time. That apart, in the proof affidavit filed at the time of examining him as P.W.1 in I.A.No.236 of 2018, he claimed that, there was a delay caused in securing copies of the documents. However, during the course of cross examination, he admitted that the statement in the proof affidavit that there was a delay in getting the documents, is not correct. It is also his admission that there was no delay in securing Ex.P.1 to Ex.P.7. It is clear from the evidence of P.W.1, the

petitioner herein, that the reasons stated by him for not filing the written statement in time, is not correct. We are not concerned about the duration of delay but the reasons stated for delay. The reasons stated by the petitioner for condoning the delay in filing the written statement, is not correct and true, therefore, the petition was rightly dismissed. This Court finds no reason to interfere with the order of the learned Subordinate Judge, Neyveli and the order dated 27.02.2019 passed in I.A.No.236 of 2018 in O.S.No.40 of 2017, is hereby confirmed.

7. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

30.09.2021

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

sri

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G.CHANDRASEKHARAN, J.

psa / sri

To

The Subordinate Judge,
Neyveli.



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