

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No. 2197 of 2017

and

CMP.No.10493 of 2017

C.Madhan

... Petitioner

Vs.

M.Sivaraj

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 29.04.2017 passed in I.A.No.893 of 2016 in I.A.No.943 of 2015 in O.S.No.304 of 2012 on the file of the Sub Court, Dharmapuri.

For Petitioner : Mr.P.Mani

For Respondent : M/s.Pooja Kanmani for
: Mr.Ashok Kumar Rajan

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in in I.A.No.893 of 2016 in I.A.No.943 of 2015 in O.S.No.304 of 2012 dated 29.04.2017 on the file of the Sub Court, Dharmapuri, thereby,

allowing the petition to restore I.A.No.943 of 2015 filed to condone the delay of 408 days in filing the application to set aside the ex-parte order passed in O.S.No.304 of 2012 dated 07.06.2013.

2. The petitioner is the plaintiff, the respondent is the defendant. The petitioner filed the said suit for recovery of money, on the strength of the pro-note executed by the respondent herein dated 22.02.2010. The respondent failed to appear before the trial Court and as such, the trial Court decreed the said suit by the judgment and decree dated 07.06.2013. Thereafter, the respondent filed a petition to set aside the ex-parte decree with the delay of 408 days in filing the application to set aside the ex-parte decree in I.A.No.943 of 2015. The said petition was dismissed for default on 16.09.2016. Thereafter, the respondent filed the present application to restore the condone delay petition on the ground that the respondent is working as Head Master and on that day exams were conducted and also because of his illness, he was unable to appear on the date of hearing viz., on 16.09.2016. After filing the Counter, the Court below allowed the petition and permitted the respondent to contest the condone delay petition on merits.

3. The learned counsel for the petitioner would submit that the suit was filed on the basis of pro-note for recovery of money. It was decreed for a sum of Rs.8,01,000/- with subsequent interest at the rate of 12% per annum from the date of suit till the date of the decree and thereafter, at the rate of 6% per annum from the date of the decree till the realization of the decreed amount. Admittedly, the respondent is working as Head Master and he wantonly failed to appear before the trial Court and allow the suit to be decreed ex-parte. Thereafter, with a delay of 408 days, he filed a petition to set aside the ex-parte judgment and decree. It was also dismissed for default by an order dated 16.09.2016. It shows that the respondent is intending only to drag on the proceedings before the Court below and allowed the Court below to pass orders ex-parte.

4. A perusal of the records shows that the respondent is working as Head Master and he was unable to appear on the date of hearing viz., on 16.09.2016 for the reason that he conducted exams and also he suffered illness. Further, on a perusal of the condone delay petition, there was a

delay of 408 days, for which, he stated that he suffered with Jaundice and as such, he was unable to appear before the Court. The respondent ought to have proved his case with valid evidence. However, the respondent may be given one more opportunity to contest the condone delay petition on merits in accordance with law in the interest of justice. Therefore, this Court finds no irregularity or infirmity in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition is dismissed. However, the respondent is permitted to contest the condone delay petition on condition that he shall deposit a sum of Rs.3,00,000/- to the credit of the suit in O.S.No.304 of 2012 on the file of the Sub Court, Dharmapuri within a period of four weeks from the date of receipt of a copy of this order, failing which, the restoration petition in I.A.No.893 of 2016 will stand automatically dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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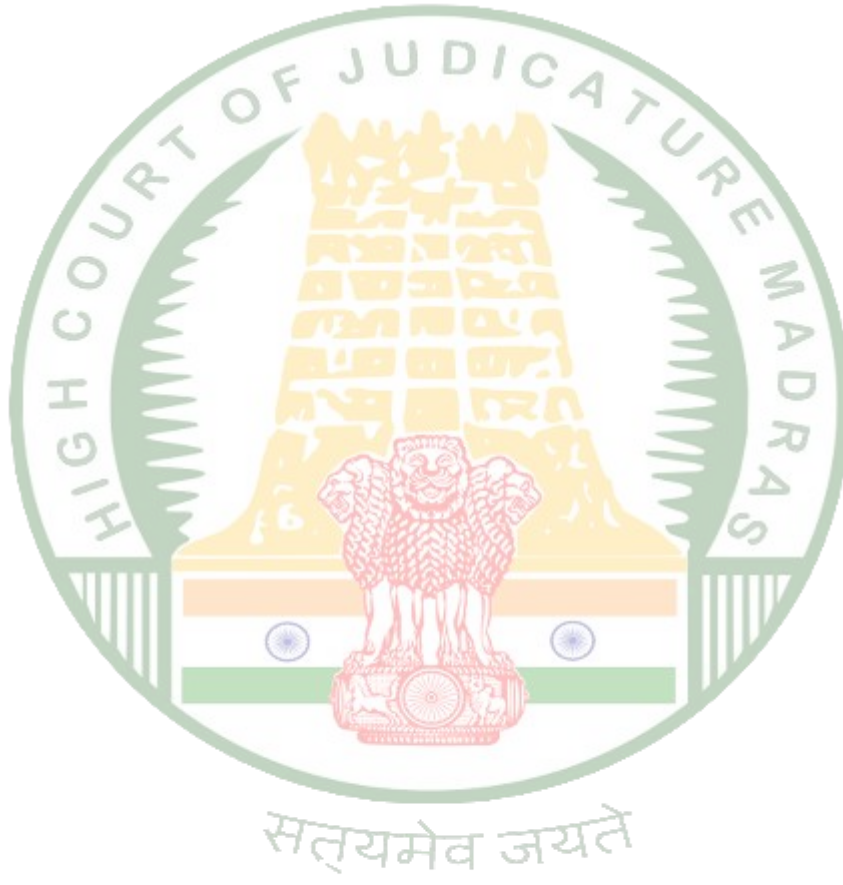
The Sub Court, Dharmapuri.



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