

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE **MR.JUSTICE A.D.JAGADISH CHANDIRA**

CRP (NPD) No.2831 of 2017

Punjab National Bank,
through its Chief Manager
and Authorized Signatory,
Mr.K.M.Hosamani,
No.75, South Mada Street,
Thiruvananthapuram, Chennai – 600 041.

.. Petitioner

Vs.

1. Usha Muthukrishnan
2. B.P.Muthukrishnan

... Respondents

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the Decree and Judgment, dated 09.06.2017 of the learned XVIII Assistant Judge, city Civil Court, Chennai in I.A.No.16113 of 2016 in O.S.No.2346 of 2008 under Section 5 of the Limitation Act.

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For Petitioner : Mr.P.B.Sampathkumar

For Respondents :Mr.M.A.Mudikannan (for R1 & R2)

ORDER

(This case has been heard through video conference)

The Civil Revision Petition has been filed, seeking to set aside the Decree and Judgment, dated 09.06.2017 made in I.A.No.16113 of 2016 in O.S.No.2346 of 2008, on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai, dismissing the petition filed under Section 5 of the Limitation Act.

2. The brief facts of the case are as follows:

The plaintiff is a scheduled Bank and the 1st respondent availed loan for sum of Rs.7,94,300/- on 23.02.2005 by executing a hypothecation agreement with relevant loan documents. Since the respondents/defendants failed to repay the loan amount, the Revision Petitioner/ plaintiff filed a suit for recovery of money.

3. The suit was originally pending on the file of the IV Additional City Civil Court, Chennai and without any notice or intimation to the plaintiff or defendants, the suit was transferred to the file of the XVIII

Assistant Judge, City Civil Court, Chennai and that the suit was dismissed for default on 07.08.2012.

4. On 30.11.2014, when the list of cases pending and disposed were taken, it was found that the suit was originally pending before the IV Additional City Civil Court, Chennai and had not been taken up for further hearing. After scrutinizing the website of this Court, the counsel for the petitioner came to know that the suit was dismissed for default on 07.08.2012. The Revision Petitioner on coming to know the knowledge of dismissal of the suit, within 30 days from the orders passed by the XVIII Assistant Judge, City Civil Court, Chennai, had filed a petition in I.A.No.8838 of 2015 for restoration of the suit. The Court had dismissed the same stating that the petition has to be filed along with the petition for condonation of delay and thereby the petition in I.A.No.16113 of 2016 was filed to condone the delay of 1472 days in filing the petition to set aside the exparte order.

5. The respondents/defendants filed a counter stating that the

restoration petition ought to have been filed within 30 days from the date of dismissal of the suit. But the plaintiff, Bank had filed the restoration petition after 1472 days. From 07.08.2012 to till date of filing of the I.A for restoration, there is a delay of more than 4 years and the plaintiff bank had not explained the reasons for the delay properly. It was further contended that the petitioner had earlier filed a petition for restoration of the suit in I.A.No.8838 of 2015 and that when it had already been dismissed, one more Interlocutory Application in I.A.No.16113 of 2016 filed for restoration of the suit for the same cause of action with same reasons, is not permissible in law. It was also contended that the Revision Petitioner had not properly explained each day's delay for condonation and that the plaintiff bank had not approached this Court with clean hands with valid reasons.

6. It was further contended that the Revision Petitioners/plaintiffs are not entitled for any indulgence, because the suit itself filed after three years period, which is barred by the principle of Limitation and the restoration petition also filed after the limitation period of three years. Hence, the petition was liable to be dismissed.

7. The trial Court finding that the earlier petition filed in I.A.No.8838 of 2015, was dismissed and that the present petition has been filed to reagitate the same issue which was already decided, had dismissed the petition, against which, the present Revision has been preferred.

8. The learned counsel for the petitioner/plaintiff would submit the petitioner is a scheduled bank. The suit was filed for recovery of loan amounts . Originally the suit was pending on the file of the IV Additional City Civil Court, Chennai and without any notice or intimation, the case was transferred to the file of the learned XVIII Assistant City Civil Judge, Chennai and that the suit was dismissed for default on 07.08.2012. The plaintiff and its counsel were not present in Court when the matter was posted. Unfortunately, the counsel for the plaintiff misplaced the Bundle along with disposed bundles and the counsel for the plaintiff lost track of the proceedings of the aforesaid suit, thereby neither the plaintiff nor the counsel were present, when the matter was listed for hearing and that none

appeared for the plaintiff and thereby the suit was dismissed. The absence of the petitioner was neither wilful nor deliberate.

9. In the aforesaid circumstances, he would submit that the petitioner immediately after the knowledge of the dismissal of the suit, within 30 days filed I.A.No.8838 of 2015 for restoration of the suit and this Court by an order dated 21.06.2016 had dismissed the petition since no application for condonation of delay was filed and thereby, the petitioner was again constrained to file I.A.No.16113 of 2016 for condonation of delay of 1472 days. Petition in IA No.8838 of 2015 was filed on 05.01.2015 and out of delay of 1472 days, 881 days pertains to the period taken by the Court to adjudicate and dispose of IA No.8838 of 2015 and the subsequent 591 days pertains to the period from 05.01.2015 to 17.08.2016 i.e., date of filing of IA No.16113 of 2016. He would further submit that the Revision Petitioner has shown sufficient cause, whereas the Court below without taking into consideration the fact that the Revision Petitioner /plaintiff is a Public Limited Bank and Public Money has been involved, had refused to condone the delay, thereby he would seek to allow the revision and restore

the suit in O.S.No.2346 of 2008.

10. Per contra, the learned counsel appearing for the respondents/defendants would submit that the plaintiff bank had acted in a very lethargic manner. He would submit that the following dates and events are necessary for deciding the petition. He would submit that the respondents entered into hypothecation agreement dated 23.02.2005 and the agreement for the loan, was executed on 03.03.2005. The suit ought to have been filed within three years, whereas, the suit itself was filed by the plaintiff after the period of limitation on 28.03.2008. Thereafter, the suit was taken before the IV Additional City Civil Court, Chennai and the respondents defendants have filed the written statement and the Court had framed the draft issues on 05.08.2011 and thereafter since the Revision Petitioner/plaintiff or his counsel did not appear before the Court and the suit was dismissed for default on 07.08.2012. Though the suit has been dismissed as early as on 07.08.2012, the Revision Petitioner Bank claiming knowledge only from 30.11.2014, had filed I.A.No.8838 of 2015 for restoration of the suit without any petition to condone the delay and that

was filed on November 2015 after a period of one year from the knowledge of the dismissal of the suit and no sufficient cause had been shown for the delay in filing the petition. Thereafter, this Court heard both parties and dismissed the petition for restoration in I.A.No.8838 of 2015 on 21.06.2016.

11. The learned counsel further submitted that the petition was dismissed on merits, taking into consideration the Article 122 of the Limitation Act stating that even from the date of knowledge, there had been a delay. Further, without challenging the earlier order, the Revision Petitioner Bank had once again filed the I.A.No.16113 of 2016 u/s 5 of the Limitation Act to condone the delay of 1472 days in filing the petition to restore the suit. Even, the second petition was filed with delay of two months after the dismissal of I.A.8838 of 2015. Notice was served on the respondents/defendants on 21.12.2016, the respondents entered appearance and filed Vakalat on 02.01.2017 and thereafter the case was posted on 23.01.2017. Even on the date, there was no representation from the plaintiff side and thereafter the case was posted on 30.01.2017, 13.02.2017, 15.02.2017, 02.03.2017, 07.03.2017 and 15.03.2017 and on all the dates the

petitioner and his counsel were absent. Meanwhile, the respondent had filed the counter on 15.03.2017, after hearing the arguments of the respondents, the Court had reserved for orders and posted the matter on 04.04.2017. Surprisingly, on 04.04.2017, the counsel for the plaintiff, bank appeared and reopened the case without any petition and recalled the orders in reserved status and without putting the defendants counsel on notice and filed written submission and argued the case. However, the Court finding that no sufficient cause has been shown to condone the delay of 1472 days, had rightly dismissed the petition to condone the delay. The Learned counsel would further submit that right from the beginning the plaintiff bank had been lethargic in pursuing the case and further the court finding the second petition was not maintainable had rightly dismissed the same.

12. Heard the learned counsels and perused the materials on record.

13. The revision petitioner/plaintiff instituted the suit against the respondents/defendants for recovery of a sum of Rs.8,86,022/-. The

respondents/defendants are alleged to have availed loan of Rs.7,94,300/- on 03.03.2005 by executing a hypothecation agreement with relevant loan documents. Since the respondents/defendants failed to repay the loan amount, the Revision Petitioner/ plaintiff filed a suit before the IV Additional City Civil Court, Chennai for recovery of money. The respondents have filed a written statement and issues were framed on 05.08.2011. Thereafter, on the point of pecuniary jurisdiction, the suit has been transferred to the XVIII Assistant Judge, City Civil Court, Chennai. After transfer, on several hearings, the bank and its counsel remained absent and since there was no representation, the Court had dismissed the suit finally on 07.08.2012 for default. Thereafter, the Revision Petitioner filed I.A.No.8838 of 2015 to restore the suit dismissed for default on 07.08.2012. After hearing both parties, the trial Court by an order dated 21.06.2016, had dismissed the application on merits. It is relevant to refer the order passed by the Court on 21.06.2016. The relevant operative portion is extracted below for reference:

“On a perusal of records, it is admitted fact that the suit was originally filed IV Additional Court and the same was transferred to XVIII Asst. Court, on 23.12.2011. Thereafter, it

stood adjourned on 04.01.2012, 02.02.2012, 08.03.2012, 02.04.2012, 06.06.2012, 06.07.2012 and finally on 07.08.2012. Being plaintiff that too bank, the petitioner / plaintiff ought to have keen in proceed with case. But, the petitioner has filed this petition from the date of knowledge. Admittedly, the respondent/defendant also made appearance in the suit and filing his written statement and also admitted that both parties i.e. Plaintiff and the defendant not appeared before the transferee Court i.e, XVIII Assistant Court. However, in view of article 122 of Limitation Act, there is no clause for date of knowledge. Hence, this petition is no legs to stand on the point of Limitation Aspect. Hence, the petition is liable to be dismissed on the Limitation Aspects.”

14. Once again, the present petition has been filed by the bank to restore the suit with the petition to condone the delay. The grounds raised to condone the delay is that the case had been transferred from the IV Additional City Civil Court, Chennai to the file of XVIII Assistant Judge, City Civil Court, Chennai and that there was no notice or intimation from the Court and further the case records were mixed up with the disposed bundles and the counsel for the petitioner lost track of the proceedings of the above suit. It is the further case of the revision petitioner that only on

30.11.2014, the petitioner/plaintiff came to know about the dismissal of the suit for default on 07.08.2012. Thereafter, on 05.01.2015, the revision petitioner filed an application in I.A.No.8838 of 2015 and the same had been dismissed by the Court on 21.06.2016 on the ground that the application ought to have been filed along with the petition for condonation of delay. Thereafter, without challenging the order in I.A.No.8838 of 2015, the revision petitioner has filed the present petition in I.A 16113 of 2016 to condone the delay of 1472 days in filing the petition to restore the suit. Even there had been delay of two months in filing the IA No16113 of 2016 after dismissal of IA No.8838 of 2015.

15. In the opinion of this Court the petitioner had been lethargic and exposing callous attitude. The reasons given by the petitioner that bundles has been misplaced and thereby they were unable to follow the case cannot be accepted. Earlier application in IA No.8838 of 2015 had been dismissed on 21.06.2016. The revision petitioner ought to have approached higher forum challenging the earlier dismissal order, whereas without resorting to the procedure contemplated under law, the petitioner

had filed IA No.16113 of 2016 even there had been delay of two months as stated above the petitioner had been very very lethargic and had been recalcitrant in filing the suit. The trial Court finding that the petitioner had been in deep slumber for over three years and not prosecuting the case diligently has held that the petitioner does not deserve any leniency and dismissed the petition. This Court does not find infirmity in the order passed by the Court below. The revision petitioner/ plaintiff has not shown sufficient cause to condone the huge delay of 1472 days.

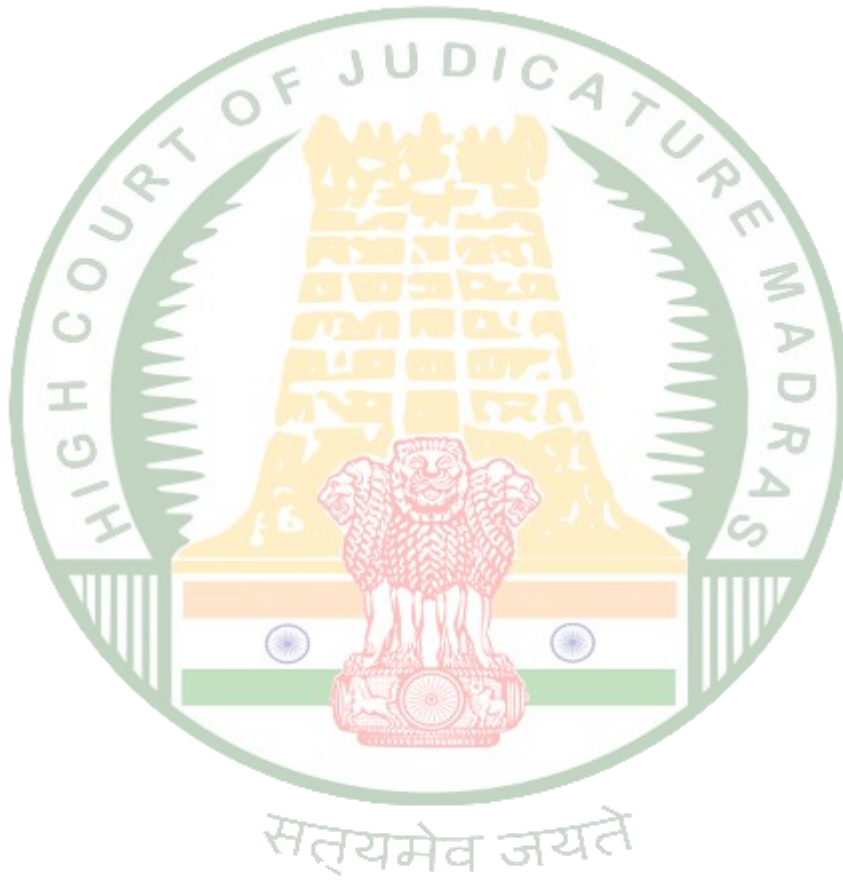
16. The revision petition is therefore dismissed. No costs.

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Index: Yes/No
Speaking order / Non speaking order

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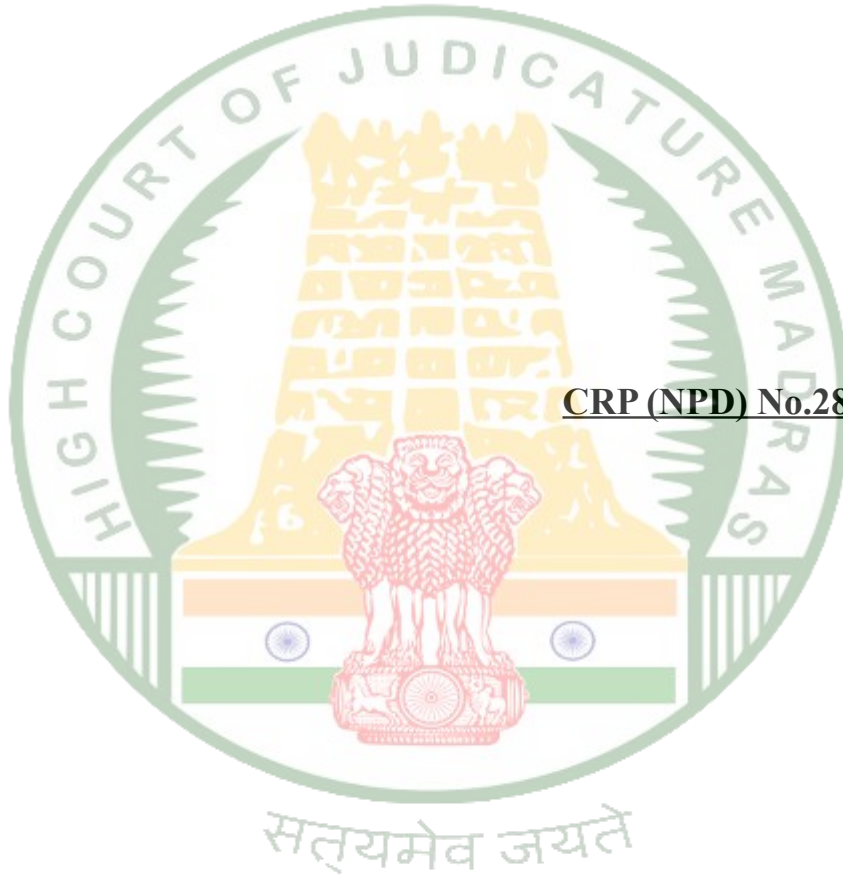
The XVIII Assistant Judge, City Civil Court, Chennai



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A.D.JAGADISH CHANDIRA, J.

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