

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(NPD)No.3538 of 2017
and CMP No.16364 of 2017

D.Parthasarathy ... petitioner

Vs.

J.Balasubrayalu ... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.08.2017 in IA.No.15313 of 2016 in OS.No11308 of 2009 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : M/s.R.Arumugam
For Respondents : Mr.Stanly John
for M/s.J.B.Solomon Peter.

ORDER

(This case has been heard through video conference)

This civil revision petition has been filed challenging the fair and decreetal order dated 07.08.2017 made in IA.No.15313 of 2016 in OS.No11308 of 2009 on the file of the VII Assistant Judge, City Civil Court, Chennai condoning the delay of 1066days in filing the petition to

set aside the exparte decree dated 25.10.2013.

2. The revision petitioner is the plaintiff. The plaintiff filed money suit in OS.No.11308 of 2009 directing the defendants to pay a sum of Rs.46,700/- with interest at 18%p.a. from the date of plaint to till date of realisation. Originally, since the defendant did not appeared despite service of summons, he was set exparte and exparte decree was passed on 21.01.2010, subsequently, petition was filed by the respondent/defendant to set aside the exparte decree and the same was allowed on 01.04.2011. Thereafter, the defendant was permitted to file written statement, the written statement was filed and issues were framed and the suit was posted for recording of evidence on 08.07.2013. On 06.08.2013, the petitioner/plaintiff was examined as PW1 and the case was posted for cross examination of PW1 on 19.08.2013. Since, the plaintiff/PW1 was not cross examined by the defendant, the case was posted to 03.09.2013. On 03.09.2013, at request of the defendant the case was posted to 11.09.2013, even on 11.09.2013, the defendant took time and again the case was posted on 20.09.2013. Even on that day adjournment was sought for by the defendant and thereby the case was

posted on 04.10.2013. On 04.10.2013, there was no representation for the defendant. The evidence on the side of the plaintiff was closed and case was posted for arguments, thereafter, the case was posted on 08.10.2013 and 09.10.2013 and since, there was no representation for the defendants and the case was posted on 10.10.2013, the trial Court after hearing the arguments of both sides reserved the judgment and passed the judgment and decree on 25.10.2013. Thereafter, EP.No.1542 of 2014 was filed by the plaintiff for attachment of salary on 20.01.2014, thereafter, EP was listed on 14.03.2014 to 06.07.2016 for service of notice and ultimately, the defendant took notice and appeared before the Court and took time for filing counter on 05.08.2016. Thereafter, the defendants had requested the matter to be referred to Mediation and the EP Court had referred the case for Mediation on 07.09.2016. The defendants appeared for Mediation but refused to settle the case and thereby the EP was posted before the Court on 26.10.2016 for payment. Whiles, the defendant without making the payment had filed the petition on 25.10.2016 to set aside the exparte decree dated 25.10.2013 and to condone delay of 1066days. The reason for delay in filing the petition was that the defendants was suffering from heart disease and

hospitalised and he was unable to let in evidence on his side and thereafter, he had undergone heart surgery. Therefore, the petition was filed seeking to condone the delay of 1066days. The plaintiff had filed counter stating that it was not an exparte decree and that he was originally set exparte and thereafter the exparte decree was set aside and thereafter the defendant appeared through the counsel and filed written statement, since, he was not cross examined PW1, a decree was filed. It was further stated by the plaintiff that the defendant was employed in responsible post in Reserve Bank of India and that no documents had been filed to support the claim that he underwent heart surgery and hospitalised and that if he was really hospitalised he could have filed supportive documents regarding his admission and leave availed from Reserve Bank of India. It was further contended that though the petitioner was aware of the exparte decree even as early as 05.08.2016, after receipt of notice from the EP Court, the petition had been filed only on 25.10.2016 and the petition was filed without any sufficient cause and it was only a dilatory tactics adopted by the defendant.

3. The trial Court despite the counter had allowed the petition on payment of cost of Rs.10,000/-. The trial Court had held that if the petitioner is not granted an opportunity to proceed with the case he would be much prejudiced and that the petition can be allowed. Against which the revision has been filed.

4. The learned counsel for the revision petitioner would submit that the respondent/defendant is responsible officer in the Reserve Bank of India, he has borrowed an amount of Rs.30,000/- from the petitioner on 07.08.2006 for his family expenses and had executed a promissory note, since, he did not repaid the amount the revision petitioner/plaintiff had filed the suit on 01.10.2009. Earlier the petitioner was set aside and thereafter he had filed the petition to set aside the exparte and he had given an opportunity. Thereafter the respondent/defendant appeared through an advocate and also filed a written statement, when the matter was posted for trial, the defendant did not appeared and after recording the evidence of plaintiff/PW1, since, the defendant did not cross examine the plaintiff/PW1 decree was passed. Though, the petitioner had claimed that he was suffering from heart problem, he under went heart surgery

and hospitalised, no documentary evidence was produced by the defendant before the trial Court to condone the delay of 1066days. The petitioner/plaintiff had taken a specific plea, that the defendant had not produced any document to show that the defendant was admitted in the hospital. Despite, the specific averment taken by the plaintiff the defendant had not chosen to file any document before the trial Court. The trial Court having recorded that the defendant had not produced any document in respect of his admission in the hospital has passed the impugned order without giving any reasoning. The trial Court has also not rendered a finding whether the defendant has shown any sufficient cause for condoning the inordinate delay of 1066days.

5. The suit is of the year 2009 and despite the decree being obtained in the year 2013, the petitioner is unable to enjoy the fruits of the decree and the defendant is still adopts dilatory tactics and evading the payment to the plaintiff.

6. The learned counsel for the respondent would submit that it is the case of money suit and that since the petitioner underwent heart

surgery, he was unable to appear before the Court and cross examine the plaintiff/PW1, he would submit that a liberal approach would be shown for condoning the delay in filing the petition to set aside exparte decree. He would submit that no documents were produced before the trial Court.

7. Heard the Counsels and perused the materials available on record.

8. In spite of the revision petitioner/plaintiff taking a specific stand in the counter affidavit the defendant had not produced any medical certificate to establish the contention in the affidavit filed in support of the petition. The respondent/defendant has not chosen to file any document before the trial Court to establish the averment made in the affidavit filed in support of the petition. In spite of the failure on the part of the defendant to prove the contention by the acceptable evidence, the trial Court had been very liberal in condoning the inordinate delay of 1066days that too without any proper reason.

9. Further, in this case, as stated by the counsel for the revision petitioner/Plaintiff, EP.No.1542 of 2014 was filed for attachment of salary and notice had been served on him on 05.08.2016 and thereafter the defendant without filing the petition to set aside the exparte decree, immediately had requested the Court to refer him to Mediation for settlement and there also he had delayed the matter and thereafter refused to settle the matter and the case had been posted before the Court on 26.10.2016, at that stage, instead of paying the decree amount, the petitioner had filed the petition on 25.10.2016.

10. Admittedly, no documentary evidence has been filed either along with the petition or after the counter filed by the revision petitioner/plaintiff. It is the settled position that unless sufficient cause shown by the parties seeking for condonation of delay, the delay cannot be condoned. In the absence of proper and acceptable reasons shown by the respondent/defendant to condone the inordinate delay of 1066days, the trial Court had erred in condoning the delay.

11. In view of the above, the civil revision petition stands allowed by setting aside the fair and decreetal order made in IA.No.15313 of 2016 in OS.No.11308 of 2009 dated 07.08.2017 passed by the VII Assistant Judge, City Civil Court, Chennai. Consequently, connected miscellaneous petition is closed. No costs.

06.07.2021.

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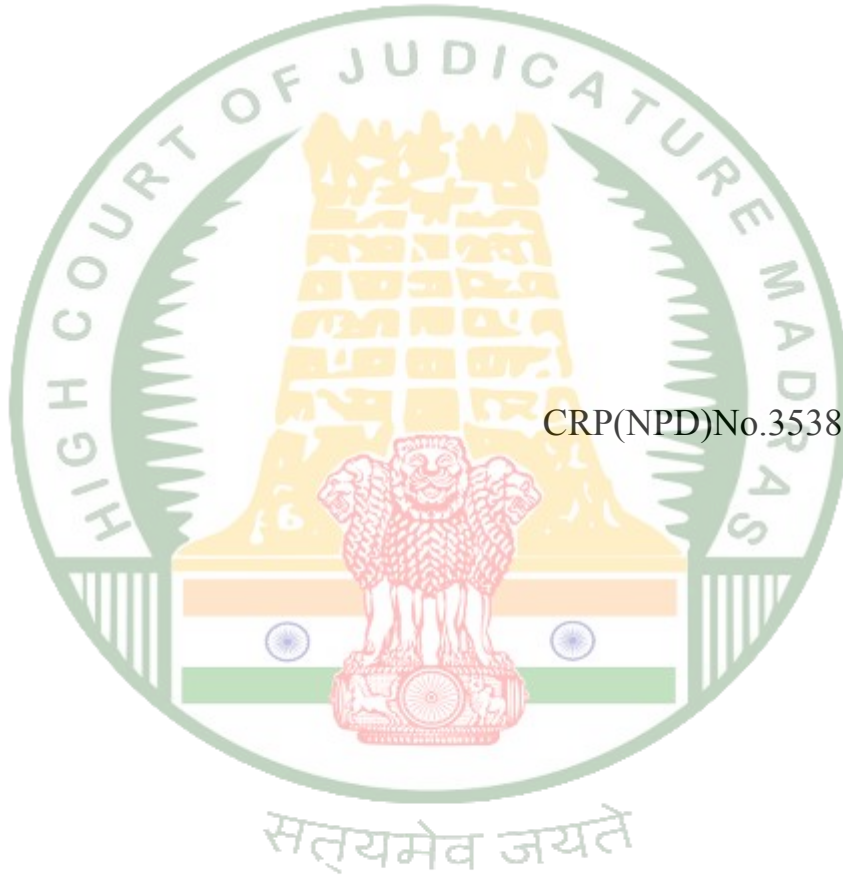
The VII Assistant Judge, City Civil Court, Chennai.



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A.D. JAGADISH CHANDIRA, J.,

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