

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM

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

C.R.P.(PD)No.3131 of 2018  
and C.M.P.No.18004 of 2018

Shiek Mohamed Jan

... Petitioner

Vs.

S.Krishnan

... Respondent

**Prayer :-** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.07.2018, passed in I.A.No.246 of 2017 in O.S.No.120 of 2015 on the file of the learned Subordinate Judge, Uthagarai.

For Petitioner : Mr.K.Thiruvengadam

**ORDER**

This Civil Revision Petition is directed as against the fair and decreetal order dated 18.07.2018 passed by the learned Subordinate Judge, Uthagarai, in I.A.No.246 of 2017 in O.S.No.120 of 2015, thereby dismissing the petition to condone the delay of 255 days in filing the petition to set aside the exparte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit in O.S.No.120 of 2015 for recovery of money. After receipt of the summons in the suit, the petitioner appeared through his counsel and filed written statement. When P.W.1 was in box for cross-examination, the petitioner failed to cross-examine P.W.1. In fact, his Advocate was also failed to appear before the Court below to cross-examine P.W.1, due to Advocates' boycott. Thereafter, he was set exparte and exparte judgment and decree passed on 10.06.2016. Therefore, the petitioner filed petition in I.A.No.246 of 2017 to condone the delay in filing the petition to set aside the exparte decree. The trial Court dismissed the said petition as against which, the present Civil Revision Petition.

3. On perusal of the affidavit filed in support of the petition to condone the delay, the petitioner stated that he was bedridden due to his kidney disease and he had undergone surgery. Whereas it is seen from the records, in the main suit, an attachment before judgment was ordered and against which the petitioner preferred an appeal before the learned

Principal Session Judge, Krishnagiri, with the delay of 53 days. In the said delay petition, notice was ordered and the respondent filed counter and categorically stated about the exparte decree. Even then, the petitioner did not take any steps to file petition to set aside exparte decree in time.

4. That apart, on the strength of the exparte decree, the respondent filed execution petition in E.P.No.74 of 2017 in which, notice was duly served on the petitioner on 10.03.2017 itself. Therefore, the reasons stated by the petitioner in the condone the delay petition, are false and insufficient to condone the delay 255 days. Therefore, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

5. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

23.07.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

**G.K.ILANTHIRAIYAN, J.**

rts

To

1. The Subordinate Judge,  
Uthagarai.
2. The Section Officer,  
V.R. Section,  
Madras High Court,  
Chennai.



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