

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

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

C.R.P.(NPD)No.4128 of 2018
and C.M.P.No.22730 of 2018

Karumanan ... Petitioner

Vs.

Periyasamy ... Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of CPC., to set aside the fair and decreetal order dated 18.09.2018 made in I.A.No.720 of 2017 in O.S.No.390 of 2004 on the file of Additional Subordinate Court, Namakkal.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.S.Saravanan

ORDER

The Civil Revision Petition is directed as against the fair and decreetal order dated 18.09.2018 passed by the learned Additional Subordinate Judge, Namakkal, in I.A.No.720 of 2017 in O.S.No.390 of 2004, thereby dismissing the petition to condone the delay 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 for recovery of money. When P.W.1 was in box for cross-examination, the petitioner failed to instruct his counsel to cross-examine P.W.1 and therefore, he was set exparte and the exparte decree was passed on 22.01.2015. On the strength of the exparte decree, the respondent filed execution petition before the Execution Court. In the said execution petition, the petitioner was served notice and thereafter he came to understand that the exparte order was passed as against him. Immediately he filed petition to set aside the exparte decree with the delay of 794 days. The trial Court dismissed the above said petition as against which the present Civil Revision Petition has been filed.

3. On perusal of the affidavit filed in support of the condone delay petition revealed that his mother, father and wife died within the sort span of time viz., on 15.02.2015, 07.04.2015 and 26.11.2012 respectively. Therefore he could not move to normal life and only on receipt of the notice in the execution petition, he contacted his counsel and filed this petition to set aside the exparte decree. However the Court below dismissed

the petition to condone the delay for the reason that the petitioner failed to show sufficient cause to condone the delay. The present suit was filed for recovery of money in the year 2004. Therefore, the petitioner may be given one more opportunity to defend his case on merits and in accordance with law.

4. Considering the above facts and circumstances, the order dated 18.09.2018 passed by the learned Additional Subordinate Judge, Namakkal, in I.A.No.720 of 2017 in O.S.No.390 of 2004, is hereby set aside on the following conditions :-

(i) the petitioner shall deposit the entire decree amount on the account of the suit within a period of four weeks from the date of receipt of copy of this order.

(ii) the petitioner shall also pay a sum of Rs. 7,500/- (Rupees seven thousand five hundred only) as cost to the respondent herein within a period of four weeks from the date of receipt of copy of this order ,

(iii) If the petitioner fails to comply the above conditions the order passed by this Court shall automatically stand cancelled.

5. With the above directions, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

08.04.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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To

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



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C.R.P.(NPD)No.4128 of 2018

G.K.ILANTHIRAIYAN, J.

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