



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.03.2021**

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P (NPD) (MD)No.2378 of 2012

and

M.P (MD)No.1 of 2012

Damodharan : Petitioner/Petitioner/Defendant

Vs.

Marichamy : Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretral order passed in I.A.No.1098 of 2009 in O.S.No.556 of 2004 on the file of the Principal District Munsif, Srivilliputur dated 13.09.2011.

For Petitioner : Mr.M.Ashokkumar

For Respondent : Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed against the order dated 13.09.2011 passed in I.A.No.1098 of 2009 in O.S.No.556 of 2004 on the file of the Principal District Munsif, Srivilliputur, rejecting the application filed by the petitioner for condoning the delay in setting aside the ex-parte decree.

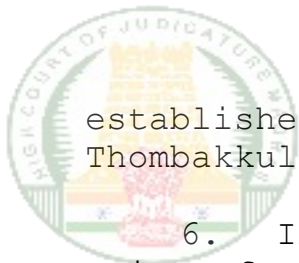
2. The respondent had filed a suit against the petitioner for recovery of money based on a Promissory note dated 10.04.2001. The petitioner had contended that he had shifted his residence to the native village of his wife poongothai's father at Vadamalapuram on 10.05.2002 and was residing there. Hence, an ex-parte decree was granted on 04.06.2004. Subsequently, on 06.02.2009, the brother of the petitioner by name Srinivasan, who was residing in Thombakkulam Village intimated him that the Court Amin had come to serve the summon on him. Only thereafter, he went to Thombakkulam and received the summons and learnt that execution petition was filed by one Marichamy to execute the decree passed in O.S.No.556 of 2004, dated 04.06.2004.



3. According to the petitioner, he didn't receive any suit summon from the Court and he had also not engaged any Advocate to appear on his behalf and that the respondent has obtained the said ex-parte decree against him by committing fraud by not duly serving the suit summon. Hence, prayed for an opportunity to establish his case. However, in that process, there is a delay of 1705 days in filing the petition to set aside the ex-parte decree as the petitioner came to know about the ex-parte decree only on 06.02.2009.

4. For the reasons stated above, the petitioner had filed I.A.No.1098 of 2009 to condone the delay in filing the petition to set aside the ex-parte decree. The said application was also resisted by the respondent, who is a plaintiff stating that the petitioner/defendant had borrowed sum of Rs.60,000/- and executed a promissory note on 10.04.2001. As the money was not repaid, originally the suit in O.S.No.272 of 2003 was filed before the Sub-Court, Srivilliputtur, in which, summon was served on the petitioner by affixture, the defendant/petitioner also had entered appearance through his Advocates R.Kannan and S.Rajaguru on 12.11.2003 and took time for filing written statement. Thereafter, the case was posted on 09.01.2004 and again adjourned to 09.02.2004. In the meanwhile, the said suit was transferred on 30.03.2004 to the file of the learned Principal District Munsif, Srivilliputtur. On 30.03.2004, once again time was granted and the suit was posted on 29.04.2004. As there was no representation either by defendant or by his Counsel, the defendant was called absent and set ex-parte. Therefore, having knowledge about the filing of the suit and after engaging the counsel, the defendant/petitioner had allowed the suit to go ex-parte and taken 1705 days to file the application to set aside the ex-parte decree. The said application was dismissed by the learned Principal District Munsif, Srivilliputtur.

5. The petitioner/defendant was examined as P.W1, who has deposed that he didn't receive the summon as he had shifted his residence to Vadamalapuram village long back. However, it is found by the trial Court that the suit summon was received by the petitioner on 29.10.2003. When the acknowledgement card was confronted by the defendant, he has admitted that the signature found on Ex.C1 was his signature. Having admitted that he received the suit summon and he had also engaged Advocates R.Kannan and S.Rajaguru to defend the case, the petitioner had denied the signature found in Ex-C2 Vakalat. Therefore, the trial Court had specifically found that having received the suit summon and engaged a counsel to defend his case and sought time for filing written statement on three occasions, had deliberately allowed the suit to be decreed ex-parte. The respondent also had



established that the petitioner had been residing only in Thombakkulam address.

6. In the light of the above factual matrix, the question arises for consideration is,

"Whether the delay of 1705 days in setting aside the ex-parte decree is justifiable?"

7. The revision petition was vehemently opposed by the learned counsel appearing for the respondent contending that the petitioner had woken up from his long slumber after nearly six years from the date of decree and that the defendant deserves no indulgence. The reasons assigned by the petitioner were found to be false by the trial Court as there is no plausible reason given in the affidavit. The learned counsel further contended that each day delay has not been explained by the petitioner and the trial Court had exercised its discretion and dismissed the application.

8. No doubt, the delay is huge and the test is not the length of delay but the reasons for the same. The Trial Court had found that,

"(a) Suit summon was served on the petitioner;

(b) The petitioner had engaged Advocates on his behalf, who had filed Vakalat;

(c) The petitioner admitted the signature found in Ex-C1 acknowledgment card for serving the suit summons and the trial Court had made an endorsement for the adjournment taken by the petitioner for filing written statement."

9. Be that as it may, the suit is of the year 2003 and the revision was filed in the year 2012 and listed for hearing in the year 2021. It is also not known whether the decree was executed and the respondent realised the decree amount or not. Further, when there is no *bonafide* in the conduct of the petitioner, the revision deserves to be dismissed.

10. In the result, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



1.The Principal District Munsif,
Srivilliputtur.

2.The Section Officer-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-10647[F] dated 12/03/2021)

**Order made in
C.R.P (NPD) (MD) No.2378 of 2012**

**and
M.P (MD) No.1 of 2012**

**Dated:
11.03.2021**

KM (22.03.2021) 4P 5C