

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****RESERVED ON : 23.06.2021****PRONOUNCED ON : 15.07.2021****CORAM:****WEB COPY****THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN****CRP(MD)No.1379 of 2013****MP(MD) .No.1 of 2013****(Through Video Conferencing)**

P.Natarajan

Petitioner/Respondent/Plaintiff

Vs

M.Kannan

Respondent/Petitioner/Defendant

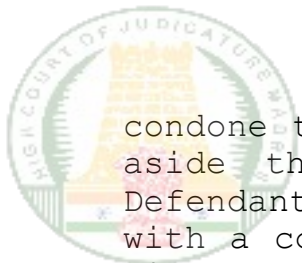
Prayer:- This Civil Revision Petition has been filed, under Section 115 of CPC, against the fair and decreetal order dated 25.03.2011, made in IA.No.382 of 2010 in OS.No.168 of 2005, by the Sub Court, Tuticorin.

For Petitioner : Mr.M.C.Swamy

For Respondent : Mr.M.P.Senthil

ORDER

- 1.This Civil Revision Petition has been filed, against the fair and decreetal order, dated 25.03.2011, made in IA.No.382 of 2010 in OS.No.168 of 2005, by the Sub Court, Tuticorin.
- 2.The Plaintiff is the Petitioner and the Defendant is the Respondent. The suit was filed for specific performance and costs and it was decreed exparte. The Defendant had filed the above application, to condone the delay of 1454 days, in filing the application to set aside the said exparte decree. Since the said application was allowed, this Civil Revision Petition has been filed.
- 3.The learned counsel for the Petitioner has submitted that the court below erred in condoning the inordinate delay of 1454 days, since the reasons assigned by the Respondent for condoning the delay are not genuine and hence, the impugned order is liable to be set aside.
- 4.The learned counsel for the Respondent has submitted that only a paper publication was effected and that the exparte decree was passed without any proper summons and that he has a good case on merits and hence, in order to give opportunity to contest the suit, the delay was condoned, by the impugned order, which is proper.
- 5.This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
- 6.The suit was filed for specific performance and an exparte decree was passed. The Defendant had filed the present application, to



condone the delay of 1454 days, in filing the application to set aside the said exparte decree. The reason assigned by the Defendant for condoning the delay is that since he was not served with a court notice, he was not aware of the proceedings and that without proper service of notice, the suit was decreed exparte, but, it was the contention of the Plaintiff that several notices had been sent to the Defendant.

7.The court below, on the materials placed before it, has found that only once the court notice was sent to the Defendant and it was returned with an endorsement 'as no residence returned as left' and thereafter, only a paper publication was effected and held that the Plaintiff did not produce any document to show that the Defendant was residing at the address given by him and that the residence given in the present application is also not denied by the Plaintiff and that the Plaintiff should have taken necessary steps to serve notice on the Defendant and hence, the contention of the Defendant that he was not served with proper court notice can be accepted. Further, in order to give one more opportunity to the Defendant, in the interest of justice, the delay was condoned on payment of cost of Rs.1000/-, by the impugned order. This Court finds no illegality or infirmity in the said findings of the court below. However, in so far as the cost of Rs.1,000/- imposed by the court below is concerned, it is enhanced to Rs.3000/-.

8.In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Srcm
To

1.The Sub Court, Tuticorin.

+1 CC to M/s.G.RAJARAMAN, Advocate (SR-22758[F] dated 15/07/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-22766[F] dated 15/07/2021)

CRP (MD)No.1379 of 2013
15.07.2021

SE (CO)
KB(28.07.2021) 2P 4C