



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.668 of 2019

and

CMP(MD)No.3621 of 2019

Muthuraj ... Petitioner/Petitioner/Defendant
vs.

Parvathi ... Respondent/Respondent/Plaintiff

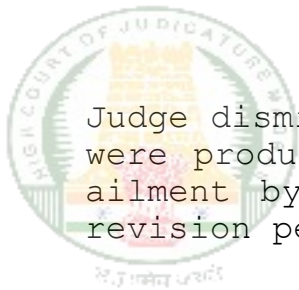
Petition filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.949 of 2017 in O.S.No.48 of 2015 on the file of the Sub Court, Theni, dated 08.01.2019.

For petitioner : Mr.B.Jeyakumar

ORDER

This petition has been filed to set aside the order made in I.A.No.949 of 2017 in O.S.No.48 of 2015 on the file of the Sub Court, Theni, dated 08.01.2019.

2.The learned counsel for the petitioner would state that the respondent/plaintiff filed a suit in O.S.No.48 of 2015 on the file of the Sub Court, Theni, against the revision petitioner/defendant for recovery of money of Rs.1 lakh with interest, contending that the revision petitioner borrowed the above amount on 12.09.2005 and did not repay the same despite demand. On receipt of summon in the suit, the petitioner appeared before the sub court through counsel and thereafter, due to illness, he could not contact his counsel and he was under the impression that his counsel will take care of the case. However, the suit was decreed exparte on 05.02.2016 due to non filing of the written statement by the revision petitioner/defendant and pursuant to the said exparte decree, the respondent/plaintiff filed E.P.No.97/2017. He would further state that only on receipt of the summon in the execution proceedings, the petitioner came to know about the exparte decree and filed I.A.No.949/2017 to condone the delay 570 days in filing the petition to set aside the exparte decree, but the trial court has erroneously dismissed the petition holding that the same has been filed only to drag on the execution proceedings. According to the petitioner, without considering the illness cited for the delay, the learned



Judge dismissed the condone delay petition holding that no materials were produced with regard to the availing of medical leave for the ailment by the petitioner. Hence, the petitioner has filed this revision petition.

3.The respondent filed counter in the condone delay petition stating that in support of 570 days delay, the petitioner had stated that he was suffering from sugar, blood pressure and jaundice, but he did not specify the dates from which he was suffering from the said ailment, cured from the same, where he had taken treatment for the ailment and on what date, he contacted his counsel. He would further state that the petitioner is working as a last grade servant in TWAD Board, but he did not produce any evidence for the medical leave taken due to the above illness. Thus, he would state that the reasons assigned for the delay are false.

4.Heard the learned counsel for the petitioner. In view of the order going to be passed, notice to the respondent is not necessary.

5.Perusal of record shows that the respondent/plaintiff filed a suit for recovery of money from the petitioner/defendant. In the suit, exparte order was passed on 03.07.2015 for not filing the written statement by the petitioner/defendant and thereafter, on 03.11.2015, ex parte decree was passed. In the condone delay petition, the petitioner has stated that he was suffering from sugar, blood pressure and jaundice, for which, he was taking treatment and therefore, he could not contact his counsel and further, he was under the impression that his counsel will take care of the case, but only on receipt of summon in E.P., he came to know about the exparte decree and therefore, the delay of 570 days had occurred in filing the petition to set aside the exparte decree. The trial court finding that the petitioner is an employee of the TWAD Board, but he did not produce any evidence for taking medical leave due to the above illness, whereas, he had stated that he could not avail leave in his office, declined to condone the delay holding that the reasons assigned by the petitioner for the delay of 570 days are self-contradictory, where I do not find any infirmity.

6.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To
The Sub Judge,
Theni.

ORDER MADE IN
CRP (MD) No. 668 of 2019
DATED : 07.01.2021

MJ (CO)
NR (02/02/2021) 3P : 2C