



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.R.P. (MD) (NPD) No.1487 of 2014

and

M.P (MD) No.2 of 2014

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1.M/s.M.S.Traders,
Through its Proprietor Moula,
No.1 Shanmugapuram,
Palani.

2.Sajitha Banu ... Revision Petitioners/Petitioners/Defendants
-vs-

The Branch Manager,
M/s.Lakshmi Vilas Bank Ltd.,
No.40, New Dharapuram Road,
Palani. ... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908, to call for the records pertaining to I.A.No.92 of 2013 in O.S.No.92 of 2008 on the file of the learned Subordinate Court, Palani and set aside the order passed by the learned Trial Court.

For Petitioner : Mr.S.M.A.Jinnah

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 17.09.2013, passed in I.A.No.92 of 2013 in O.S.No.92 of 2008 on the file of the learned Subordinate Court, Palani.

2.The facts of the case are that the petitioners are the defendants 1 and 2 and the respondent is the plaintiff. The suit was filed for recovery of money. On 24.08.2010, the defendants were set exparte and an exparte decree was passed. The petitioners had filed the above application, to condone the delay of 560 days in filing a petition to set aside the exparte decree and the said application was dismissed by the impugned order. Hence, the present revision has been filed.

3.The learned counsel for the Petitioners has submitted that during the trial proceedings, the first petitioner was in abroad and that only the first petitioner came to India and visited the respondent bank on 22.09.2011, he came to know about the exparte decree and immediately, on 07.10.2011 the above application was



filed and thus, the delay had occurred, which is neither wilful nor wanton and that when the delay has been explained satisfactorily, the Court below ought to have allowed the application.

4.This court heard the learned counsel for the petitioners and also carefully perused the materials placed on record.

5. From the records available, it is seen that the other defendant, namely, the 3rd defendant had participated in the trial and the case was disposed of on merits. The court below, on the ground that as against the exparte decree passed against the petitioner, only an appeal will lie, had dismissed the application. However, it is to be seen as to whether the each and every day of delay has been properly and satisfactorily explained.

6. The only reason assigned by the 1st petitioner for condoning the delay is that since he was in abroad, he could not participate in the trial proceedings in India, resulting in passing the exparte decree against the petitioners. According to the Petitioners, the 1st petitioner had gone abroad on 11.07.2008 and he came to India and visited the respondent Bank on 22.09.2011 and on 07.10.2011, the application was filed. Now, it is to be seen as to whether the said reasons and explanation are supported by valid materials.

7. The exparte decree was passed on 21.04.2010. The only document produced by the 1st Petitioner is the xerox copy of 20th and 21st pages of his passport. On a perusal of the said document, this court finds no endorsement regarding the departure from 11.07.2008. There is no endorsement and any other material to show that as on the date of passing of the exparte decree, he was in abroad. There is no proper and satisfactory explanation offered by the Petitioner for each and every day of delay. The reasons assigned by the Petitioners for condoning the delay cannot be accepted for want of materials and hence, the application is to be dismissed accordingly on the above grounds.

8.In fine, this Civil Revision Petition is dismissed, dismissing the application on the above grounds. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

cp/msa



To:-

1.The Subordinate Judge,
Palani.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P. (MD) (NPD) No.1487 of 2014

and

M.P (MD) No.2 of 2014

Dated:

22.07.2021

MGJ(12.08.2021) 3P 4C