



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.1591 of 2014

and

M.P (MD) No.1 of 2014

WEB COPY

Vetrimani

... Petitioner/Petitioner/Defendant

-VS-

Rajendran

... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908, to set aside the order and decreetal order dated 26.06.2014 made in I.A.No.131 of 2013 in O.S.No.4 of 2012 on the file of Additional Subordinate Court at Kumbakonam by allowing this Civil Revision Petition.

For Petitioner : Mr.K.Guhan

For Respondent : Mr.A.Lakshmishankar

ORDER

This Civil Revision Petition has been filed to set aside the order and decreetal order dated 26.06.2014 made in I.A.No.131 of 2013 in O.S.No.4 of 2012 on the file of Additional Subordinate Court at Kumbakonam.

2.The facts of the case are that the petitioner is the defendant and the respondent is the plaintiff. The suit in O.S.No.4 of 2012 was filed for recovery of money. Due to non appearance of the petitioner, an exparte decree was passed. Thereafter, the petitioner filed an application in I.A.No.131 of 2013 before the Additional Subordinate Judge, Kumbakonam, to condone the delay of 275 days to set aside the exparte decree. After hearing the submissions, the learned Additional Subordinate Judge, Kumbakonam, by an order dated 26.06.2014 had dismissed the application, against which, the present revision has been filed.

3.The learned counsel for the Petitioner has submitted that the petitioner was taking treatment for appendices and due to continues treatment, he could not able to contact his counsel and he has not appeared before the Court below and the same is neither wilful nor wanton and that unless the delay is condoned, the petitioner would be put to great hardship and that when the delay has been explained satisfactory, the Court below erred in refusing to condone the delay and hence, he would pray for setting aside the impugned order.



4.The learned counsel appearing for the respondent would submit the reasons assigned by the Petitioner for condoning the delay are not acceptable and that the petitioner wantonly and deliberately remained exparte before the court below and that only in order to protract the proceedings, the petition has been filed and the impugned order is sustainable. Therefore, he prays to dismiss this Civil Revision Petition.

5.This Court heard the learned counsel appearing on either side and also carefully perused the materials placed on record.

6.The suit was decreed exparte, by the judgement and decree, dated 02.02.2012 and EP.No.115 of 2012 was filed for attachment of salary. The reason assigned by the Petitioner for condoning the delay in filing the application to set aside exparte decree is that since he has been taking treatment of appendices, he could not able to attend the Court hearing and he came to know about the exparte decree only on the date when the notice was served on the E.P proceedings.

7.Where there is sufficient cause shown with supporting materials and the application for condonation of delay has been moved *bona fidely*, the Court would normally condone the delay, but in cases where the delay has not been explained at all by valid evidence, the discretion of the court in such cases would normally tilt against the applicant, who seeks to condone the delay.

8. In this case, this Court finds no proper and satisfactory explanation given by the Petitioner for each and every day of delay, by producing valid material evidence and as such, this Court is of the view that the Court below was right in refusing to condone the delay in filing the application to set aside the exparte decree, by the impugned order, which warrants no interference.

9.In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp/msa



To:-

1.The Additional Subordinate Judge,
Kumbakonam.

Copy to

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

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-23410[F] dated 22/07/2021)

+1 CC to M/s.K.GUHAN, Advocate (SR-23593[F] dated 23/07/2021)

C.R.P. (MD) (NPD) No.1591 of 2014

and

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Dated:22.07.2021

RK (02.08.2021) 3P 6C