

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	14.02.2021
Date of Order	13.05.2021

WEB COPY

CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**CRP (NPD) (MD) No.415 of 2016andCMP (MD) No.1796 of 2016

Dr.J.Jayson Roy : Petitioner/Petitioner/1st Defendant
Vs.

Xavier Christian Raj : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 29.01.2016 made in I.A No.259 of 2014 in O.S No.195 of 2003 on the file of the Sub Judge, Padmanabapuram.

For Petitioner : Mr.G.Venugopal
for Mr.M.P.Senthil

For Respondent : Mr.C.Sankar Prakash

O R D E R

This Civil Revision Petition is filed against the the order passed in I.A No.259 of 2014 in O.S No.195 of 2003, dated 29.01.2016 passed in the Sub Judge, Padmanabapuram, in so far as the condition imposed to deposit of Rs.1,50,000/- to the credit of the Trial court.

2.The respondent herein as plaintiff filed the suit in O.S No.195 of 2003 on the file of the Sub Court, Padmanabhapuram against the petitioner/defendant for recovery of Rs.1,57,866/-. Due to the absence of the petitioner/defendant, the suit was decreed ex-parte on 13.01.2004. The petitioner/defendant filed interlocutory application to set aside the ex-parte decree and the same was allowed and the suit was taken on file. Once against because of the absence of the petitioner/defendant, another one ex-parte decree was passed on 04.07.2007. The petitioner/defendant filed I.A No.208 of 2014 to condone the delay of 1968 days in filing the petition to set aside ex-parte decree passed in O.S No.195 of 2003. The petitioner filed another I.A No.259 of 2014 to set aside the decree. Both the



petitioners were allowed and the suit was restored on the file with the condition directing the petitioner/defendant to deposit the cheque amount of Rs.1,50,000/- before the Court. Against the conditional order passed in I.A No.259 of 2014, the petitioner is before this court.

WEB COPY

3. Heard both sides and perused the materials available on record.

4. The learned counsel appearing for the petitioner/defendant submitted that already the delay condonation petition was allowed and hence, the petition to set aside the ex-parte decree is a consequential relief and the ex-parte decree set aside petition can be allowed, but the trial court allowed the set aside ex-parte petition, directing the petitioner/defendant to deposit a sum of Rs.1,50,000/- and hence, the conditional order passed by the trial court is erroneous and the conditional order passed in the such cases should not be such as would have the effect of decreeing the suit itself and prays that the Civil Revision Petition has to be allowed. For that, the learned counsel appearing for the petitioner/defendant submitted the following decisions:-

(1) (2002) 5 SCC 30 (Vijay Kumar Madan Vs. R.N.Gupta Technical Education Society);

(2) 2005-4-L.W.219 (T.Kalyanasundaram Vs. M.S.Arumuganayakar);

(3) 2007 (5) CTC 198 (D.K.Bhaskaran Vs. Barton Trust); and

(4) 2011 (1) CTC 438 (C.Madhu Vs. K.Vajravel).

5. On the other hand, the learned counsel appearing for the respondent/plaintiff submitted that the petitioner/defendant wantonly and willfully, has not participated in the court proceedings and on two occasions, ex-parte decree were restored and in order to give reasonable opportunity to the petitioner/defendant, the trial court allowed the petition to set aside the ex-parte decree, but the petitioner/defendant has not complied with the directions passed by the trial court and hence, it shows the attitude of the petitioner/defendant and there is no merit in the petition and prays that the Civil Revision Petition has to be dismissed.

6. The respondent/plaintiff filed O.S No.195 of 2003 during the year 2003 for recovery of money and the suit was decreed ex-parte, on 13.01.2004. The respondent/plaintiff filed E.P No.6 of 2005. The petitioner/defendant filed I.A No.173 of 2005 to set aside the ex-parte decree passed on 13.01.2004 and the same was allowed and then,

<https://hcservices.ecourts.gov.in/hcservices/>



the suit was heard on merits and the judgment was pronounced on 04.07.2007. Then the petitioner/defendant filed I.A No.208 of 2014 to condone the delay and IA No.259 of 2014 to set aside the ex-parte decree. I.A No.208 of 2014 was allowed and I.A No.259 of 2014 was also allowed on condition that the petitioner/defendant shall deposit Rs.1,50,000/- in the court and against the order passed in I.A No.259 of 2014, the petitioner/defendant preferred this Civil Revision Petition.

7. On perusal of the decision reported in 2007(5) CTC 198 (D.K.Bhaskaran and another Vs. Barton Trust), it has been held in para 9 as follows:-

..(i) *Sufficient cause for non-appearance to be proved on the date of hearing alone and not anterior or posterior to the said date was considered by the Honourable Supreme Court in the decision reported in (2000) 3 SCC 54 (G.P.Srivastava v. R.K.Raizade and others). In paragraph 7 of the Judgment the Supreme Court held thus, "7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any sufficient cause from appearing when the suit was called on for hearing. Unless sufficient cause is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words was prevented by any sufficient cause from appearing must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The sufficient cause for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If sufficient cause is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the*



defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

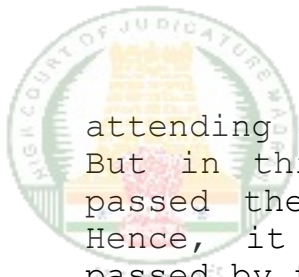
(Emphasis Supplied)

(j) An unreasonable condition imposed to restore the suit which was decreed ex parte was found erroneous by the Honourable Supreme Court in the decision reported in (2002) 3 SCC 159 (V.K. Industries v. M.P. Electricity Board), wherein in paragraphs 4 to 6 it is held thus, "4. The only grievance of the appellants is that the terms, upon which ex parte decree is set aside, are onerous and not reasonable. On behalf of the respondents submission was made supporting the said terms as justified.

5. Ordinarily, a money decree is not stayed unconditionally and the judgment-debtor would be put on terms. Even so, such conditions must be reasonable having regard to all relevant factors. Although ex parte decree was passed against the appellants, once it is set aside on the ground of non-service of suit summons the money decree did not exist for execution. It is no doubt true that in restoring a case the court may impose conditions to deposit costs or the decretal amount or some portion thereof or to ask the defendant to give security but such conditions should be reasonable and not harshly excessive. In the impugned order the appellants are put on terms to deposit a sum of Rs.2,00,000 and to furnish a bank guarantee for the remaining suit claim within a period of two months. In our view these terms are onerous, harsh and unreasonable in the facts and circumstances of the case and that too even before the trial of the suit on merits.

6. On 29-10-2001, the learned counsel for the appellants stated that within two weeks, a sum of Rs.50,000 shall be deposited in the trial court and notice was issued on that day. During the course of hearing the learned counsel informed that a sum of Rs.50,000 is already deposited in the trial court."

8. By referring to the above decision, it is clear that while setting aside the ex-parte decree, imposition of condition must be reasonable and must have some justification, having regard to the



attending circumstances and the same cannot be imposed arbitrarily. But in this case, the trial court without any sufficient cause, passed the conditional order, which is not just and reasonable. Hence, it is necessary to interfere into the conditional order passed by the trial court.

WEB COPY

9. In view of that, this Civil Revision Petition is allowed, setting aside the conditional Order of the trial court, dated 29.01.2016 passed in I.A.No.259 of 2014 in O.S No.195 of 2003 alone, on condition that the petitioner pays a sum of Rs.5,000/- (Rupees Five thousand only) to the **Chief Justice Relief Fund** within a period of two weeks from the date of receipt of a copy of this order, failing which the impugned order of the trial court shall stand restored automatically without reference to this court. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Sub Judge, Padmanabapuram,
Kanyakumari District
2. The Section Officer, Accounts Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-18546[F] dated 13/05/2021)

CRP (NPD) (MD) No.415 of 2016
13.05.2021

DKS (CO)

TR(08.07.2021) 5P 4C