



A.No. 1905 of 2022

in

C.S.No. 65 of 2006

V.BHAVANI SUBBAROYAN, J.

This Application has been filed to condone the delay of 4610 days in filing the application to set aside the ex-parte decree granted in C.S.No. 65 of 2006 dated 30.07.2009.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3.It is stated by the applicant that he is the defendant in the above suit. He is the absolute owner of the property of an extent of 2744 sqft, comprised in Old Paimash Nos.307, 308, 311 to 316, S.No.234/4, T.S.No. 53 Part situated at Adambakkam Village, Plot No.37, Door No.28, Kundrakudi Adigalaar Main Road, Adambakkam, Chennai - 600 088 within the Sub-Registration District of Alandur and Registration District of South Chennai. In respect of the said property, he got the Eencumbrance Certificate dated 17.03.2022, wherein, there is an entry in respect of O.A.No. 71 of 2006 in C.S.No. 65 of 2006. Hence, he approached his Advocate to get the details.



Thereafter, he came to know that the above civil suit has been filed by the respondent against him. The above civil suit is filed stating that the applicant had borrowed a sum of Rs.10,00,000/- from the respondent and executed a suit promissory note. Thereafter, he had issued a confirmation receipt for the loan obtained by him on 22.04.2005. Subsequently, he had issued a cheque dated 22.09.2005 bearing No.806797 drawn at Catholic Syrian Bank, Purasawalkkam Branch, Chennai, towards principal and interest due and the cheque got bounced as dishonoured. Hence, the respondent had issued a legal notice dated 26.11.2005, which was received by him on 28.11.2005 and failed to reply for the same and also the dues were not settled. Following the same, the respondent herein had filed the above suit for recovery and the suit was decreed ex-parte on 30.07.2009 and based on the same, the respondent herein had developed an encumbrance, whereby, the aforesaid property of the applicant was charged towards the ex-parte decree.

4. The learned counsel for the applicant/defendant contended that the applicant had never borrowed any money from the respondent herein. In fact, one Suresh, Proprietor of "Thirumalai Poly Industries" is a common known person of respondent herein and the applicant. While so, the said



Suresh had borrowed money from the respondent herein and the applicant stood as a Guarantor for the said transaction. As and when the applicant had received the legal notice, he had contacted the said Suresh and handed over the suit summons to him with an assurance from Suresh that he will clear the outstanding of the respondent. Believing his words, the applicant has not agitated the above suit by placing the facts on his side.

5. It is clear that, after noticing the entries in the Encumbrance Certificate, the applicant has approached the respondent herein and informed about the details collected by him and lien starring at his property. Immediately, the respondent had agreed for a compromise in removing the entry from the Encumbrance Certificate, after receiving the agreed compromised money. It appears that the entries are not removed from the Encumbrance Certificate, and there would be no purpose to resolve the dispute between the parties herein. By compromising the matter on its terms, the parties would be benefited.

6. Though the ex-parte decree came to be passed on 30.07.2009, the applicant gained information and knowledge about the ex-parte decree only on 17.03.2022, when the applicant had applied for encumbrance



certificate in connection with the above said properties and only thereafter, he gained knowledge about the details therein more particularly, the ex-parte decree. Hence, there is no delay and he is filing it immediately after gaining the information and knowledge about the ex-parte decree. Hence, in the interest of justice, this Court is of the view that the above application has to be allowed.

7. In this regard, it is useful to refer a decision of the Supreme Court reported in 1998 (7) SCC 123 (N.Balakrishnan Vs. M.Krishnamurthy), relevant portion of which reads as follows:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. ... "

8. Therefore, this Court is of the opinion that the above judgment of the Supreme Court is squarely applicable to the facts of the present case, as the applicant has clearly explained the delay, more particularly, to the



satisfaction of this Court.

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9. Accordingly, the above application is allowed. No costs.

28.04.2022

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Note: Issue Order copy on 29.04.2022



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