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C.R.P.No.1942 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1942 of 2019

and

CMP.No.12718 of 2019

Sakthivel

....

Petitioner

Vs

Vasu

....

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.10.2018 made in I.A.No.838 of 2017 in O.S.No.171 of 2015 on the file of the learned II Additional District Judge, Puducherry.

For Petitioner : Mr.R.Thiyagarajan

For Respondent : Mr.S.Vadivel

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 09.10.2018 made in I.A.No.838 of 2017 in O.S.No.171 of 2015 on the file of the II Additional District Judge, Puducherry, thereby dismissing the petition to condone the delay of 431 days in filing the petition to set aside the ex-parte decree.



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2. The respondent filed a suit for recovery of money to the tune of Rs.4,00,000/- along with interest of Rs.1,08,000/-. After receipt of the summons, the petitioner failed to appear before the Trial Court. Therefore, he was set ex-parte and an ex-parte decree was passed on 01.03.2016. On the strength of the ex-parte decree, the respondent filed an execution petition in E.P.No.252 of 2017. In the Execution Petition, the petitioner was served with notice and only after receipt of the notice, he came to know about the suit. Therefore, on the date of entering appearance before the Execution Court, the petitioner also filed a petition to set aside the ex-parte decree with a delay of 431 days. It was dismissed on the ground that even after receipt of the notice in the execution petition, the petitioner had filed a petition to set aside the ex-parte decree only one month later. Further, it is stated in the affidavit filed in support of the condone delay petition that after receipt of the suit summons, the petitioner negotiated with the respondent in respect of payment of the amount. Therefore, it is clear that though he had knowledge about the institution of the suit, he did not engage any advocate to defend the suit. Whereas, in the deposition, he categorically admitted that he never met the respondent herein. Therefore, there was no possibility for seeing him to negotiate. Hence, the Trial Court



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dismissed the application filed by the petitioner to condone the delay of 431 days.

3. The learned counsel appearing for the petitioner would submit that the petitioner may be given one more opportunity to defend the suit, since he has got a valid defence in the suit. He further submitted that the decree passed by the Trial Court is inconsonance with Order 21 Rule 4 of CPC.

4. A perusal of the decree reveals that after framing the issues, the Trial Court decreed the suit. That apart, the petitioner failed to state any valid reason to condone the delay of 431 days in filing the petition to set aside the ex-parte decree. Taking into account the submission of the learned counsel for the petitioner, this Court is of the opinion that the petitioner may be given one more opportunity to defend the suit on merits on condition that the petitioner deposits the suit amount, atleast principal amount.

5. In view of the above, the order dated 09.10.2018 made in I.A.No.838 of 2017 in O.S.No.171 of 2015 on the file of the II Additional District Judge, Puducherry, is hereby set aside on condition that the petitioner shall deposit a sum of Rs.4,00,000/- to the credit of the suit in O.S.No.171 of 2015 on the file of the II Additional District Judge,



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Puducherry, on or before 23.01.2023. On such deposit, the Trial Court is directed to proceed with the Trial afresh and complete the same within a period of six months from the date of receipt of a copy of this order. If the petitioner fails to deposit the said amount, the respondent is at liberty to proceed with the execution petition.

6. The learned counsel for the petitioner also submitted that now in the execution petition, the recovery of salary is already proceeded with. If any amount was already recovered from his salary that shall be deducted from the total amount.

7. In the result, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

12.12.2022

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
Lpp

Note : Issue order copy on 23.12.2022

To

The II Additional District Judge,
Puducherry.



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G.K.ILANTHIRAIYAN, J.

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