

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED:15.11.2022****CORAM:****THE HONOURABLE Mr. JUSTICE S.SOUNTHAR**

C.R.P.(NPD)No.3430 of 2022
and C.M.P.No.18251 of 2022

Ramesh

...Petitioner

Versus

Gangaderan

...Respondent

PRAYER: Civil Revision Petition filed under Article 115 of the Civil Procedure Code, praying to set aside the fair and decretal order dated 20.09.2022 made in I.A.No.1 of 2022 in O.S.No.95 of 2018, on the file of the Principal District Judge, Villupuram.

For Petitioner :Mr.A.E.Ravichandran

For Respondents :Mr.C.Munusamy for Caveator

O R D E R

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition to condone the delay of 844 days in filing a petition to set aside the ex-parte decree passed against the petitioner.



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2. The respondent herein filed a suit for recovery of money against the petitioner in O.S.No.95 of 2018, on the file of the Principal District Judge, Villupuram. The suit was laid based on promissory note. The service in the suit was effected through substituted service. Ultimately, the ex-parte decree was passed against the petitioner on 03.10.2019.

3. After receipt of notice in the execution proceedings, the petitioner had filed a petition to set aside the ex-parte decree along with petition to condone the delay of 844 days on 23.02.2022. The Court below dismissed this application to condone the delay in filing set aside the application on the ground that he failed to explain the delay satisfactorily. Aggrieved by the same, the petitioner/plaintiff has come up by way of this revision.

4. In the affidavit filed in support of condoned delay petition, the petitioner had stated that due to Covid-19 lock down, he was not able to contact his counsel and appear before the Court below. It was also stated by the petitioner that as per the decision of the Apex Court, if the period from



15.03.2020 to 28.02.2022 is excluded the actual delay would be 88 days not 844 days.

5. The learned counsel for the respondent tried to sustain the order passed by the Court below by submitting that the petitioner entered appearance in execution petition on 06.03.2021 and nearly after eleven months he had filed a petition to set aside the ex-parte decree only on 23.02.2022. Therefore, the explanation offered by the petitioner for condoning the delay of 844 days could not be accepted.

6. Heard the arguments of the learned counsel for the petitioner and the learned counsel for the respondents and perused the records.

7. The preamble portion of the ex-parte judgment dated 03.10.2019 would make it clear that the personal service was not effected in the suit. The summons sent to the petitioner had been returned unserved and thereafter, substituted service through paper publication was effected. The petitioner in his affidavit had stated that due to Covid-19 Pandemic, he could not contact his counsel and take effective steps to conduct the case. If the



delay between 15.03.2020 to 28.02.2022 is excluded, as per the decision of the Apex Court, the delay will be only 88 days.

8. Taking into consideration the difficulty faced by the litigants during the pandemic period and also the fact that no personal service was effected on the petitioner in the main suit and considering the explanation filed by the petitioner to explain the delay, this Court is inclined to set aside the order passed by the Court below and condone the delay in filing the petition to set aside the ex-parte decree on condition that the petitioner should deposit a sum of Rs.4,00,000/- to the credit of O.S.No.95 of 2018 on the file of the Principal District Court, Villupuram, within a period of four weeks from the date of receipt of a copy of this order.

9. The Civil Revision Petition is allowed on condition that the petitioner shall deposit a sum of Rs.4,00,000/- to the credit of O.S.No.95 of 2018 on the file of the Principal District Court, Villupuram, within a period of four weeks from the date of receipt of a copy of this order. In case, the petitioner fails to deposit the above said amount within the stipulated period,



the civil revision petition stands automatically dismissed.

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10. On such deposit, the Court below is directed to take up the petition filed by the revision petitioner to set aside the ex-parte decree and dispose it of in accordance with law, within a period of four weeks thereafter.

11. In case, the ex-parte decree is set aside, the Court below shall dispose of the suit within a period of six months from the date on which the ex-parte decree is set aside. Consequently, connected miscellaneous petition is closed.

15.11.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
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S.SOUNTHAR, J.

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To
The Principal District Judge,
Villupuram.

C.R.P.(NPD)No.3430 of 2022

15.11.2022