



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.04.2022
CORAM:
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

WEB COPY

CRP(PD)No.4764 of 2017
and
CMP.No.22431 of 2017

S.Panneerselvam

...Petitioner/Petitioner/
5th Defendant

Vs.

Sri Balaji Chit and Financiers,
Rep. By its Managing Partner,
No.97/5, Post Office Street,
Sholinghur, Walaja Taluk,
Vellore District.

...Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair & decreetal order dated 11.09.2017 passed in I.A.No.220 of 2017 in O.S.No.47 of 2014 on the file of the Sub-Court, Arakkonam, Vellore District.

For Petitioner : Mr.G.P.Shivakumar
No Appearance

For Respondent : Mr.M.Venkateswaran

O R D E R

The Civil Revision Petition has been listed under the caption 'for dismissal'. There has been no appearance even before my learned predecessor and also on the earlier hearing dates.

2.The revision petition has been filed by the 5th defendant in O.S.No.47 of 2014, aggrieved by the order in I.A.No.220 of 2017, which had been filed under Section 5 of the Limitation Act to condone the delay of 891 days in filing an application under Order 9 Rule 13 of C.P.C., to set aside an exparte decree in O.S.No.47 of 2014 dated 11.09.2014 and passed by the learned Sub-Judge, Arakkonam, Vellore District.

3.The suit in O.S.No.47 of 2014 had been filed by the respondent, seeking a judgment and decree against the 5th



defendant primarily to pay a sum of Rs.4,53,946/- together with subsequent interest on Rs.2,00,000/- and also for costs.

4.A written statement had been filed by the 5th defendant / revision petitioner herein. Thereafter, the suit had been decreed exparte on 11.09.2014. An application had been filed by the revision petitioner herein under Section 5 of the Limitation Act to condone the delay of 891 days in filing an application to set aside the exparte decree. In the affidavit filed in support of the said petition, it had been stated that the petitioner had been hospitalized in Apollo K.H.Hospital in Melvisharam for treatment and his wife suffered from mental disorder and that, he came to know about the exparte decree only after receiving notice in the Execution Petition. It had been stated that in view of those reasons, the delay should be condoned.

5.Unfortunately, during the hearing of the application, the petitioner did not graze the witness box to state about these facts particularly when he was possessed of medical records. It should only have been prudent that he produced those medical records and subjected both his oral evidence and the documents produced by him to cross-examination. Having not taken that particular step, the learned Sub-Judge at Arakkonam had, in the order, now complained, dated 24.08.2017 in I.A.No.220 of 2017 and in I.A.No.221 of 2017 dismissed both the Interlocutory Applications.

6.It had been stated by the learned Sub-Judge that though some medical records had been produced but no medical records had been produced that he was suffering from ailments from 2011 as contended. It had been stated that the facts stated had not been proved by the petitioner. That being the Court of first instance, having held that facts stated have not been proved, unless materials are produced, this Court cannot go around that particular finding and re-examine the facts.

7.This Civil Revision Petition is therefore, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To:-

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The Sub-Court,
Arakkonam,
Vellore District.

+1 CC to Mr.M.Venkateswaran, Advocate sr 28338.

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KJ (CO)
SP (12/05/2022)