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C.R.P. (NPD) No.523 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.12.2021

Delivered on : 28.02.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (NPD) No.523 of 2017

and

C.M.P.No.2603 of 2017

Chinnaparaj

... Revision Petitioner

Vs.

1.Anthonysamy

2.Peter

3.Christhuraj

4.Johnkennedy

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 28.07.2016, in I.A.No.1856 of 2015 in O.S.No.252 of 2010 on the file of the I Additional District Munsif-cum-Judicial Magistrate No.I, Ulundurpet.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.T.Gandhi



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ORDER

This Civil Revision Petition has been filed against the order, dated 28.07.2016, in I.A.No.1856 of 2015 in O.S.No.252 of 2010, passed by the I Additional District Munsif-cum-Judicial Magistrate No.I, Ulundurpet, dismissing the petition to condone the delay of 1364 days in filing the petition to set aside the *ex-parte* decree.

2.For the sake of convenience, the petitioner shall hereinafter be referred to as “defendant” and the respondents shall be referred to as “plaintiffs”.

3.The suit was filed by the plaintiffs for declaration, injunction and for other reliefs as against the defendants in the year 2010. The suit came to be decreed *ex parte* on 10.01.2012. The defendant has filed the impugned petition to condone the delay of 1364 days in filing the petition to set aside the *ex parte* decree. The said petition was dismissed by the trial Court by order dated 28.07.2016. Challenging the said order of dismissal, the defendant has preferred the present Civil Revision Petition.



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4.The learned counsel for the defendant/revision petitioner submitted that the defendant was staying at Chennai and his brothers were contesting the suit and he was awaiting intimation from his counsel about the case status, but only when he received notice in the Execution Petition for hearing on 16.11.2015, he came to know about the *ex parte* decree passed in the suit, after which, he enquired his brothers and then his counsel, and finally, on 04.11.2015, on perusal of Court records, he came to know that the case was transferred from Principal District Munsif Court to I Additional District Munsif Court and that an *ex parte* decree was passed against him on 10.01.2012. The learned counsel further submitted that, immediately thereafter, the defendant filed the petition to set aside the *ex parte* decree, along with the impugned petition to condone the *bona fide* delay, which occurred due to his counsel. The learned counsel prayed to protect the defendant's legitimate right and to condone the delay.

5.Per contra, the learned counsel appearing for the respondents/plaintiffs submitted that, after filing of the suit, the defendants were represented by their counsel and he took nearly ten adjournments to



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file statement of the defendants, but on failure of the same, the defendants were set *ex parte* on 05.08.2011 and after examining plaintiffs' side evidence, an *ex parte* decree came to be passed on 10.01.2012. Only after filing Execution Petition, the defendant has come forward with the impugned petition only to drag on the execution of the decree. Therefore, the learned counsel prayed for dismissal of the Civil Revision Petition.

6.Heard the learned counsel on either side and perused the entire materials available on record.

7.On a perusal of the impugned order, it is seen that the trial Court has observed that the defendant has neither examined his brothers nor his counsel to prove his stand that there was no intimation from his counsel. The trial Court has found that the defendant received the summons in Execution Petition as early as on 26.10.2015 and the period of 11 days between 26.10.2015 and filing of the impugned petition, i.e., on 06.11.2015, is not explained, whereas, it is settled proposition that each day of delay has to be explained.



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8.The defendant has taken a stand that he was not aware of the transfer of the case. Be that as it may, it is seen that the *ex parte* decree was passed on 10.01.2012 in the presence of the counsel nominated by the defendant. The defendant admits that he has not contacted his counsel after the institution of the suit, till he received the notice in Execution Petition, which is more than three years, however, he has not given any plausible explanation for not contacting his counsel for such a long time. He shifts the burden on his brothers, however, he has not taken steps to examine them to prove the same. He has remained silent for all these days and now, after receiving the notice in the execution proceedings, he has come up with this impugned petition. The defendant ought to have been diligent, and pleading ignorance and blaming the counsel cannot be a worthy reason for condoning such a huge delay of more than three years.

9.In ***University of Delhi v. Union of India and others [2019 SCC Online SC 1634]***, a Three-Judge Bench of the Hon'ble Supreme Court has held as follows :



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“20. ... Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the Opposite Party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation.”

In the opinion of this Court, the defendant has not given the “sufficient cause” to justify the delay of more than three years. Even assuming the defendant came to know about the *ex parte* decree only on 26.10.2015, i.e. when he received the summons in execution proceedings, the delay of 11 days bears not even an iota of reason, as rightly held by the trial Court.

10. Therefore, this Court finds no infirmity or illegality or perversity in the impugned order passed by the trial Court. Accordingly, this Criminal Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2022

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

1.The I Additional District Munsif-cum-Judicial Magistrate No.I,
Ulundurpet.

2.The Section Officer		with a direction to send back the
(V.R. Section),		original records to the Court below,
High Court, Madras.		immediately



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S. KANNAMMAL, J.

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