



CRP(PD)(MD)No.1048 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1048 of 2022 and
CMP(MD) No.4213 of 2022

P.Muthupalaniyandi

... Petitioner

Vs

P.Murugapandi

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.1 of 2021 in O.S.No.171 of 2018, on the file of the Subordinate Court, Periyakulam, dated 01.10.2021.

For Petitioner : Mr.C.Murugavel

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned Subordinate Judge, Periyakulam in I.A.No.1 of 2021 in O.S.No.171 of 2018, dated 01.10.2021.



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2.The respondent/plaintiff has filed the suit in O.S.No.171 of 2018, as against the petitioner/defendant, for the relief of recovery of money, before the Subordinate Court, Periyakulam, wherein, pleadings have been completed and the trial also commenced. PW 1 was examined in chief. Certain documents have also been marked. Since the defendant failed to cross examine PW 1, he was set exparte and an exparte order was passed on 20.03.2020. Thereafter, the petitioner/defendant filed an application in I.A.No.1 of 2021, under Section 5 of Limitation Act, to condone the delay of 311 days in filing the petition to set aside the exparte decree passed in O.S.No.171 of 2018. The trial Court dismissed the said application holding that though the petitioner has taken notice in EP proceedings, he has not filed the application to set aside the exparte decree, within the stipulated time and also the delay of 311 days has not been properly explained. Aggrieved over the same, the present Civil Revision Petition is filed.



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3.The learned counsel appearing for the petitioner submits that the petitioner has already discharged his liability and the suit has been filed that the promissory note has been given as collateral purpose and he is having a good case in the trial and if the delay of 311 days in filing the petition to set aside the exparte decree is not condoned, he would be greatly prejudiced. The learned counsel has also relied on a decision of the Honourable Supreme Court in ***Suo motu Writ Petition (C) No. 3 of 2020, dated 10.01.2022***, wherein, it was clarified that the period from 15.03.2020 till 28.02.2022 has to be excluded for the purpose of calculating limitation. However, the trial Court, without considering the same has erroneously dismissed the application filed for condoning the delay. The petitioner has also filed an affidavit of undertaking that he will cross examine the plaintiff's side witness on the same day, when they appear for evidence and shall co-operate for an early disposal of the suit.



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4.The learned counsel appearing for the respondent submits that the exparte order was passed on 20.03.2020. Thereafter, the respondent/plaintiff has initiated the EP proceedings before the Executing Court on 27.11.2020, wherein, the petitioner/defendant has received notice and entered appearance. Even then, he has not taken any steps to set aside the exparte decree and therefore according to him, this application has been filed belatedly to gain time and he has also not explained the delay of 311 days satisfactorily and therefore, there is no need to interfere with the order of the trial Court. Hence, this Civil Revision Petition is liable to be dismissed.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The suit in O.S.No. 171 of 2018 was filed for the relief of recovery of money, before the Subordinate Court, Periyakulam on 03.12.2018. Due to non-appearance of the defendant on 30.03.2020, he



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was set exparte and exparte order was passed on the same day.

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Thereafter, the petitioner filed an application to condone the delay of 311 days in filing the application to set aside the exparte order and the same was dismissed by the trial Court on the ground that the delay of 311 days has not been properly explained. The trial Court has held that though the petitioner has taken notice in the execution proceedings, he has not taken any steps to set aside the exparte order within the time. The Honourable Supreme Court in ***Suo motu Writ Petition (C) No. 3 of 2020, dated 10.01.2022***, has held as follows:-

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.



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IV.It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12 A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

7. In view of the order passed by the Honourable Supreme Court of India as stated supra, the period of limitation has to be computed excluding the period from 15.03.2020 to 28.02.2022 and therefore this benefit has to be extended to the petitioner also. Moreover, considering the affidavit of undertaking filed by the petitioner that he will cross examine the plaintiff's side witness on the same day and he will extend his co-operation for early disposal of the suit, Court is inclined to allow this Civil Revision Petition.



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8. Accordingly, this Civil Revision Petition is allowed. The order passed by the learned Subordinate Judge, Periyakulam in I.A.No.1 of 2021 in O.S.No.171 of 2018, dated 01.10.2021 is hereby set aside. The trial Court shall restore the suit to file and endeavour to conclude the trial as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

22.09.2022

Index : Yes / No.
Internet : Yes / No.
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To

The Subordinate Court, Periyakulam



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B.PUGALENDHI, J.

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Order made in
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