



A.Nos.6019 of 2022 and 1810 of 2023
in E.P.Nos.145 and 146 of 2018

WEB C **K.KUMARESH BABU, J.**

These applications have been filed challenging the order of the learned Master in rejecting the applications to condone the delay in filing the applications to set aside the exparte order dated 30.11.2019.

2.Heard Mr.V.P.Sengottuvel, learned Senior Counsel for the applicant and Mr.Vishnu Mohan, learned counsel for the first respondent and perused the material available on record.

3.Mr.V.P.Sengottuvel, learned Senior Counsel would submit that in the execution proceedings an exparte order was passed on 30.11.2019. Since there was a settlement talks between the parties, the applicant had not entered appearance and that he was under the impression that the settlement would be fruitful. He would also submit that owing to the business commitments, he had been regularly travelling and therefore, he was unable to contact his counsel. The learned Master without considering the valid reason given, had rejected the delay holding that the applicant had been dormant and lethargic and therefore is liable to face the consequences. He would also submit that the reason assigned for each and every day delay and the reasons assigned by the learned Master for each and every delay has not been satisfactorily explained and is contrary to the facts of the case.

4.He would further submit that the application to set aside the exparte order

<https://www.mhc.tn.gov.in/judis> ought to have been filed within a period of 30 days. But, however, the same had



been filed in the month of March 2021. He would also rely upon a suo moto order passed by the Hon'ble Apex Court wherein which dealt with the limitation in filing of the application and would submit a liberal view ought to be taken. He would also submit that once if the application is allowed and the application to set aside the exparte order is ordered, he would immediately file a counter and without seeking an adjournment, he will contest the applications. He would also request this Court to take notice of the fact that the applicant has resigned as a Director as early as in the year 2012. Hence, he would pray this Court to set aside the order of the learned Master to condone delay in seeking to set aside the exparte order.

5. Countering his arguments, Mr. Vishnu Mohan, learned counsel for the first respondent would submit that the applicant had not been arrayed as a party as a Director of the Company but as a Promoter of the Company. Therefore, he cannot claim that he would not be liable to discharge his liability under the decree. He would further submit that the order of the Hon'ble Apex Court in the issue of limitation would not be available to the petitioner in this case as the period of limitation to file an application to set aside the exparte order was long over as early as on 12.12.2019 and the pandemic had only set in March 2020. Therefore, he would further submit that there was no error in the order passed by the learned Master which is not liable to be interfered with. The reasonings assigned by the applicant cannot also support the case of the applicant. Hence, he would seek

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indulgence of this Court to dismiss the applications filed by the applicant.

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6.I have considered the rival submission made by the learned counsel appearing on either side and perused the material available on record.

7.The learned Master had passed an order setting aside the exparte, the applicant herein in both the execution petitions on 13.11.2019. It is correct that an application to set aside the exparte order should be filed within 30 days of the order. If an application is sought to be filed, the same should be filed on or before 12.12.2019. But, in this case such an application had been filed only in the month of March 2021. The reasonings assigned by the applicant is that he had been regularly travelling due to his business commitments and also was under the impression that the settlement talks were going on between the parties would be fruitful and that his interest would be taken care of by the company.

8.As rightly pointed out by the learned counsel for the respondent that the order of the Hon'ble Apex Court passed a suo moto in the issue of limitation would not be applicable to the present facts of the case as the period of limitation was long over before the pandemic set in. But, this Court would also takes situation that prevail after the pandemic had set in. The present application had been filed in the month of March 2021 during the pandemic period. Hence, this



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Court is of the view that a linien view should be taken in the present case considering the fact that such an application had been filed during the pandemic period. But, however, the applicants should be imposed with a cost of Rs.10,000/- in each of the application to be paid to the first respondent. The applications are allowed on a condition that the respondent shall pay Rs.10,000/- to the first respondent in each of the application within a period of two weeks from the date of a receipt of a copy of this order.

9.On such payment, the Registry is directed to number the applications to set aside the exparte order and post the matter for arguments immediately.

17.04.2023

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