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A.No.2219 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.06.2023

Delivered on : 23.06.2023

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

A.No.2219 of 2023

in

C.S. No. 910 of 2008

Dialysis Supplies & Medical Services (P) Ltd.,
Rep. by its Director
Mr. M.Joseph
Cameran Avenue, Pallikonda,
North Arcot – 635 809

...Applicant

Vs.

1.Integrated Finance Company Limited
Rep. by its Authorised Signatory
Having its registered office at “Vairams”
No.112, Thyagaraya Road
T.Nagar, Chennai – 600 017.

2. J.A.Sundaram

...Respondents

Prayer: Judge's Summons Filed under Order XIV, Rule 8 of O.S. Rules read with Section 5 of the Limitation Act, to condone the delay of 2229 days in filing the present application to set-aside the ex-parte Judgement and Decree dated 08.12.2016.



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For Applicant : Ms. L.Sweety
for Mr. S.Ramesh Kumar

For Respondent 1 : Mr. V.P.Raman.

JUDGMENT

This application has been filed to condone the delay of 2229 days in filing the application to set aside the ex parte Judgement and Decree dated 08.12.2016. The applicant is the Ex-Director of the 1st defendant company, which was closed in the year 2009.

Averments in the application:

2. The 1st respondent / plaintiff has filed a suit for recovery of money for a sum of Rs.25,42,924.04/- along with future interest on the basis of Hire Purchase Agreement dated 11.09.2002; the said suit was decreed ex parte; the claim made by the 1st respondent / plaintiff in the suit is not correct; the summons in the suit has been issued to the old address of the defendant Company; the Company was closed in the year 2009 itself, despite that, the 1st respondent has taken the summons to the old address; the applicant



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came to know about the ex parte decree dated 08.12.2016, only when the Police Department issued notice under Section 160 and 91 Cr.P.C on 27.01.2023; without following due procedure, the 1st respondent has obtained a decree; the applicant is an heart patient and he was under treatment; due to COVID pandemic the applicant could not present the application, immediately after he came to know about the same in the year 2021; the 2nd defendant was one of the Directors of the Company and his whereabouts is not known; the 1st respondent / plaintiff without taking any steps to serve the summons upon the other Directors had resorted to take coercive steps with the help of police; the applicant did not have any knowledge about the suit and the delay in filing the application to set aside the ex parte decree is not wanton; hence, the delay should be condoned in the interest of Justice.

Counter filed by the 1st respondent / plaintiff in brief:

3. The applicant approached the 1st respondent / plaintiff to extend financial assistance and entered into Hire purchase



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agreement on 11.09.2002; the 2nd respondent stood as a guarantor for the above agreement for a total sum of Rs.21,30,000/-; the above loan is agreed to be payable in 36 installments at Rs.59,167/- per month from 11.10.2002 to 11.09.2005; that the defendants had paid a sum of Rs.13,50,844/- and there was a balance of Rs.12,68,104.88/- along with additional financial charges and interest totaling to a sum of Rs.25,42,924.04/-, as on 09.09.2008; hence, the suit in C.S.No.910 of 2008 was filed for recovery of the said sum with interest.

4. It is the contention of the 1st respondent / plaintiff that summons was issued to the defendants to the same office address which was incorporated in the Hire purchase agreement; since summons was not served, substituted service was also effected on 10.10.2010 in a local daily newspaper; the defendants remained absent; they were set ex parte and an ex parte decree was granted on 08.12.2016; it is wrong on the part of the applicant that he came to know about the ex parte decree only in the year 2023; even as



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per his contentions, he came to know about the decree in the year 2021 and still he had not taken any steps to set aside the ex parte decree; the applicant have slept over and had taken this application with false excuses; this application has been filed as an afterthought; the 1st respondent / plaintiff is presently under provisional liquidation and directly being overseen by the Madras High Court; it is currently functioning only to collect dues from defaulter such as defendants for repaying its deposit holders and bond holders; this application has been filed with ulterior motive to delay the proceedings; hence, the application should be dismissed.

Discussion:

5. The suit has been filed by the 1st respondent / plaintiff for recovery of outstanding payable by the defendant Company on a Hire Purchase Agreement executed by them on 11.09.2002. The 2nd respondent who is the 2nd defendant in the suit stood as a guarantor for the above hire - purchase. Since the 2nd respondent / 2nd defendant had entered into Hire purchase agreement on behalf



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of the company, the 1st respondent / plaintiff has rightly impleaded the Company and its Director who stood as guarantor.

6. The summons have been issued to the address in which the company was situated. The address of the company is shown in the Hire purchase agreement dated 11.09.2002. The suit is of the year 2008 and it is alleged by the applicant who is the Ex-Director of the company that the company was closed in the year 2009. Since the suit has been filed in the year 2008, there is every possibility for the company to receive summons, where it was functioning during the relevant point of time. It is alleged by the applicant that he came to know about the ex parte decree only when he received the notice from the Economic Offences Wing in the year 2021. Immediately thereafter also, no steps have been taken to set aside the ex parte decree. The applicant company is well aware of its Hire purchase agreement. So it is not a case where the decree has been sought on any false transactions. The company which was very much aware of its liability to its creditors



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ought to have informed their change of address in case they had either closed the company or shifted it else where. Without doing so, the application has been filed after several years to condone the delay in filing the application to set aside the ex parte decree. Even if it is accepted that the applicant company had the knowledge about the decree only after they received a notice from Economic Offences Wing, the applicant company has not taken any action for setting aside the decree and contest the suit on merits. Despite the company had chosen to send a reply it has not opted to file an application to set aside an ex parte decree. That only would show that all along that the Company had the knowledge about the decree but the people in-charge of the Company kept quit for reasons best known to them.

7. Now at a belated stage, this application has been filed as an afterthought in order to gain further time by saying that there was no knowledge about the ex parte decree. The reasons stated by the applicant to condone the huge delay of 2229 days is not



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satisfactory and the reasons stated were also not substantiated through any acceptable evidence. Hence, this Court is not satisfied to condone the huge delay of 2229 days in filing the petition to set aside the ex parte decree. The plaintiff after having taken the summons to the last known address of the defendants had completed the summons by taking paper publication. After several years, the applicant has filed this application just to drag the proceedings. Since the reasons stated by the applicant to condone the huge delay is not satisfactory, the application lacks merit.

8. In the result, the application is dismissed.

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R.N.MANJULA. J,

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Pre-delivery Order in
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