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CRP No.4545 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4545 of 2017

Anbu

... Petitioner

Versus

Palanisamy

...Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 03.07.2017, made in I.A.No.899 of 2014 in O.S.No.23 of 2010, on the file of the Sub-Court, Sankari.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Jayaprakash

ORDER

The petitioner has filed this revision petition to set aside the fair and decretal order dated 03.07.2017, made in I.A.No.899 of 2014 in O.S.No.23 of 2010, on the file of the Sub-Court, Sankari.



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2. Heard, Mr. R. Manokaran, learned counsel for the petitioner and Mr. R. Jayaprakash, learned Counsel for the respondent and perused the materials available on record.

3. Challenging the order passed in I.A.No.899 of 2014 in O.S.No.23 of 2010 on the file of Sub-Court, Sankari, the plaintiff has preferred this revision. The petitioner has filed the suit for the relief of specific performance against the respondent / defendant and the same was dismissed for default on 17.08.2011. As he was unwell and not able to follow the proceedings, after, recovery, he took steps to restore the Suit, but there occurred a delay of 1163 days, and he prayed to condone the same and the said application was objected by the respondent / defendant stating that each and every day for the delay had to be explained, but the petitioner has not given sufficient reasons for the said delay, nor produced any medical records to prove his illness. Hence, he prayed to dismiss the application.

4. On considering both sides' submissions and on a perusal of the evidence of petitioner as well as the Medical certificate Ex.P1, the learned trial Judge finally held that the petitioner, who suffered sever stomach pain during 2011 and as per the medical adviser, he has taken treatment till 2013,



and after recovery, he filed application to restore the suit with a petition to condone the delay, but he has not produced any medical records to support his contentions. Even, Ex.P1-Medical certificate was issued by one Physician Dr.P.V.Neepa rani, from ESI dispensary, which was written in her letter head and the Doctor simply Certified that the petitioner was suffering from “ Acute Viral Hepatitis and Brunchopreemonia” during the period from 17.08.2011 to 17.08.2013, and except that no other medical records was enclosed for his prolonged treatment. Even though, admittedly, he suffered from illness, but as per Ex.P1, he was recovered during 2013 August itself, but the present application was filed after 15 months for the alleged recovery. Hence, the reason assigned for the delay of 1163 days had not been properly explained. Accordingly I.A.No.899 of 2014 was dismissed on 3.07.2017. By challenging the said finding, the plaintiff has preferred this revision.

5. The learned counsel for the revision petitioner argued that the trial Court failed to take note of the fact that due to illness, he was not able to approach the Court and after recovery, he met his counsel and filed application, though there was some delay on his part. Since his absence was neither wanton and nor negligent, the trial Court ought to have allow the application, instead of that, who are applying hypothetical views, use the



petition was dismissed, which as such is erroneous and prayed to set aside the findings of the trial Court. In support of his contentions, he relied on the following decision reported in **(i) 2021 6SC 5112, Brahampal Alisa Sammay and Another Vs. National Insurance Company**, in which relevant portion reads as follows:

"D. Motor Vehicle Act, 1988-S.173 Second proviso- Appeal seeking enhancement of compensation-Dismissal on ground of limitation - when not justified - Appeal seeking enhancement of compensation filed by the parents of the deceased with 45 days' delay - Delay having occurred on account of illness of the wife of appellant husband, held, was properly explained - Further, no mala fides could be imputable against the appellants for filing the appeal after the expire of ninety days - Therefore, the strict approach taken in the impugned dismissal order, held, is hypertechnical and not sustainable in the eye of the law and, thus, the impugned dismissal order is set aside and matter remitted to the High Court for disposal on merits- Limitation Act, 1963, S.5"

(ii) (2013) 12 SCC 649, Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, relevant portion of which reads as follows:

"B. Limitation Act, 1963 - S.5- Condonation of delay- obligation of Court while dealing with application for condonation of delay and approach to be adopted while



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*considering grounds for condonation - Principles summarised
- Constitution of India, Arts.226 and 136."*

6. By way of reply, the learned counsel for the respondent submitted that the delay of the petition has not been sufficiently explained by the plaintiff and he neither produced the medical records, nor assigned any proper reasons for the unwanton delay and the same was rightly appreciated by the learned trial Judge.

7. On considering both side submissions, it is seen that the plaintiff approached the trial Court to restore his suit, which was dismissed for default, but there was a delay of 1163 days and the reason assigned by him is that he suffered from Stomach Pain and was under treatment from 17.08.2011 to 17.08.2013. Hence, he was not able to follow the Court proceedings. Admittedly, he filed a certificate Ex.P1, issued by the Doctor, who simply certified that he was unwell and suffered from “ Acute Viral Hepatitis and Brunchopreemonia” stomach pain for the period from 17.08.2011 to 17.08.2013. As rightly pointed out by the learned trial Judge, if really the petitioner suffered with cronic stomach pain, he would have better medical records, but no other medical records were placed to prove his prolonged treatment. As per Ex.P1-Medical certificate, he recovered in the month of



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August 2013 itself, but this application was filed nearly about after 15 months, and therefore it is true that to condone the delay, the Court is not to support the view on hyper technical ways. But, at the same time, the delay has not been condoned blindly. In the case on hand, the petitioner had submitted the prolonged illness, but without sufficient medical proof, and when he approached the Court with definite stand that he suffered from illness, the burden is on him to prove that he took treatment for illness, but no such, Medical documents were produced on his side to prove the alleged treatment. The said aspect was rightly appreciated by the learned trial Judge, which needs no interference by this Court. The petitioner has not explained sufficient reason for each and every day's delay hence, the authorities relied by him are not applicable to the facts of the case.

8. In the light of the above observations, this Civil Revision Petition is dismissed as devoid of merits and the findings given by the learned trial Judge are confirmed. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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- To
- 1.The Sub-Judge, Sankari.
 - 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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