



WEB COPY



C.R.P(PD)(MD).No.1542 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.04.2023

Pronounced on : 20.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.1542 of 2018

and

C.M.P(MD)No.3600 of 2018

P.Jessi

...Petitioner/Defendant

Vs.

S.M.Gandhi

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.992 of 2016 in O.S.No.1553 of 2004 on the file of the Principal District Munsif, Madurai Town dated 22.03.2017 and allowing the Civil Revision Petition.

For Petitioner : Mr.V.Muthukamatchi

For Respondent : Mr.S.Manohar



ORDER

WEB COPY This Civil Revision Petition is filed against the order dated 22.03.2017 passed in I.A.No.992 of 2016 in O.S.No.1553 of 2004 on the file of the Principal District Munsif Court, Madurai Town.

2. The learned counsel for the petitioner has submitted that the petitioner is the defendant in O.S.No.1553 of 2004 on the file of the Principal District Munsif Court, Madurai Town. The respondent/plaintiff has filed the said suit for declaration, permanent injunction and mandatory injunction. Since non-appearance of the defendant, an ex-parte decree was passed on 05.10.2010. The petitioner filed a petition on 26.10.2010 to set aside the ex-parte decree and the same was returned for certain defects. The returned petition was mixed with other case records in the office of his counsel. After sincere effort, it was traced and hence, there is a delay of 549 days in representing the petition before the Court. The petitioner has filed a petition in I.A.No.992 of 2016 in O.S.No.1553 of 2004 to condone the delay of 549 days, but the Trial Court has dismissed the petition on the ground that the affidavit was filed by the advocate's clerk. The delay is only in respect of representation and the matter between the Court and the party. In support his argument,



the learned counsel for the revision petitioner has relied on the following citations:

(1) 1995 (1) CTC 587 (R.S.Munirajan /v/ M/s. Jaya Theatre and 5 others), wherein it is held in paragraph No.15 as follows:

“15. In the present case, there was a delay of 102 days in representing the plaint. The delay occurred since the plaint and other papers were got mixed up with other case bundles and the same could not be traced and represented in time. The advocate clerk of the plaintiff filed in affidavit setting out the reason for the delay and he also deposed the same in his oral evidence. Thus, considering the facts arising in this case in the light of the judicial pronouncements cited supra, and in the interest of justice, I hold that the delay of 102 days in representing the plaint can be excused since the plaintiff has made out a case of condoning the delay in representation.....”.

(2) 1993 TLNJ 375 (Y.Cusbar /v/ K.Subbarayan), wherein it is held as follows:

“.....In this regard, it may be pointed out that though the respondent has filed a counter affidavit denying he averments made in the affidavit sworn to by the advocate’s



WEB COPY



C.R.P(PD)(MD).No.1542 of 2018

clerk, he does not claim to have any personal knowledge about the matter. Therefore, it is not possible to hold that the explanation offered by the advocate's clerk in detail as to how the delay took place in representing papers, is not reliable or not sufficient. Therefore, disagreeing with the view expressed by the learned Single Judge, we accept the explanation offered for the delay. At the same time, we are also of the view that the respondent should be compensated for the inordinate delay."

(3) (2007) 4 MLJ 635 (D.Muralidharan /v/ Chinnappan (died)

and Ors.) wherein it is held in paragraph No.12 as follows:

"12.Further, the delay in re-presentation cannot be put to the account of the party and the Court has to take care to see that justice does not suffer in such cases".

3. Per contra, the learned counsel for the respondent has contended that the delay of 549 days i.e. nearly 1 ½ years delay is not an ordinate delay and the reason for mixing up with other case bundles is not acceptable one. It is for the party to be vigilant in his suit proceedings. The Trial Court has correctly held that the affidavit filed by the



advocate's clerk is not acceptable. Even, as per the citations relied on by the learned counsel for the revision petitioner, the said advocate's clerk has not deposed in this case. Therefore, this Civil Revision Petition may be dismissed.

4. Heard both sides and perused the records in this Civil Revision Petition.

5. It is clear that the respondent as plaintiff has filed the main suit in O.S.No.1553 of 2004 on the file of the Principal District Munsif Court, Madurai Town and in that suit an ex-parte decree was passed on 05.10.2010. The revision petitioner states that on 26.10.2010 he filed the petition to set aside the said ex-parte decree i.e., within 30 days from the ex-parte decree. It is contended that the petition to set aside the ex-parte decree was returned by the Trial Court and the same could not be represented within the time. The petition is represented with the delay of 549 days. The matter is between the party and the Court. Considering the citations relied by the learned counsel for the petitioner, the delay condone petition affidavit in respect of representation can be filed by the advocate's clerk. At the same time, the other party has to be compensated while considering the inordinate delay. Considering the



C.R.P(PD)(MD).No.1542 of 2018

above facts and circumstances, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the respondent.

6. In the result, this Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.3,000/- (Rupees Three Thousand Only) as cost to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which this Civil Revision Petition stands dismissed automatically without any further reference to this Court. Consequently connected Miscellaneous Petition is closed.

20.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

vsd



WEB COPY



C.R.P(PD)(MD).No.1542 of 2018

To

- 1.The Principal District Munsif,
Madurai Town.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(PD)(MD).No.1542 of 2018

P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(PD)(MD).No.1542 of 2018
and
C.M.P(MD)No.3600 of 2018

20.07.2023