



C.R.P.No.1017 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1017 of 2023
and CMP.No.7371 of 2023

K.Solai

... Petitioner

Vs

Vijayakumar

... Respondent

Prayer : Civil Revision Petition filed under Section 115 of CPC praying to set aside the fair and decreetal order dated 16.02.2023 passed in I.A.No.155 of 2022 in O.S.No.28 of 2012 on the file of the learned II Additional Sub Judge, Cuddalore, by allowing this revision petition.

For Petitioner : Mr.T.S.Baskaran

For Respondents : Mr.M.Marimuthu

ORDER

This civil revision petition arises against the order of the learned II Additional Subordinate Judge, Cuddalore in I.A.No.155 of 2022 in O.S.No.28 of 2012.



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WEB COPY 2. O.S.No.28 of 2012 is a suit for recovery of money on foot of a promissory note for a sum of Rs.8,00,000/-. The defendant remained exparte and the suit came to be decreed on 18.01.2013. To set aside the exparte decree and to condone the said delay of 3510 days in filing the petition under Order IX Rule 13 CPC, the defendant took out an application in I.A.No.155 of 2022.

3. The reason for the delay pleaded in the said application was that he had engaged a lawyer by name Mr.B.Sivasubramaniam, who though filed a vakalath, did not file the written statement, despite instructions to file the same. The defendant would state that he did receive the notice in the execution petition, but had been advised to contest the execution petition rather than to move an application to set aside the exparte decree. He would further plead that between 2012 to 2017, he had gone to Vridhachalam, to take treatment for jaundice, and owing to his illness, he could not conduct the case further. He would further plead that he subsequently got a proper advise and had moved this application to condone the delay in setting aside the exparte decree.



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WEB COPY 4. The learned Judge ordered notice in I.A.155/2022 and received a counter from the respondent/plaintiff.

5. The respondent/plaintiff specifically brought to the notice of the Court that the petitioner/defendant is not a layman but staff of the judiciary at Cuddalore, who was in active service. He retired from service in June 2022 and this application came to be filed on 29.09.2022. He would further plead that in the execution proceedings, notice was ordered and after contest, delivery was ordered by the I Additional Sub Judge at Cuddalore on 28.08.2018, which was also challenged before the High Court. He would state that absolutely no valid reasons had been given by the defendant/judgment debtor to condone the delay. He would point out that from 05.06.2014 when the defendant was served with notice in the execution proceedings till the filing of condone delay petition, the petitioner/defendant was actively participating in the proceedings before the Execution Court. He would further plead that in fact during the course of execution proceedings, the defendant/judgment debtor had filed a petition to adjourn the sale and had also paid a sum of Rs.10,000/- for the said purpose. On these grounds, the



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plaintiff sought for dismissal of the condone delay petition filed by the defendant/judgment debtor.

6. A perusal of the order in the said I.A. would show that when the matter was taken up for enquiry, both the petitioner and the respondent were absent. The learned Judge without coming to the conclusion that whether sufficient cause had been made out, had allowed the application, putting the defendant on terms to pay a sum of Rs.3,500/-.

7. Aggrieved by the said order, the plaintiff/deGREE holder had filed the present revision.

8. Heard Mr.T.S.Baskaran for the revision petitioner and Mr.M.Marimuthu for the respondent.

9. A perusal of the order shows that the learned Judge had allowed the application only on the ground "in the interest of justice". In order to condone the delay, it is essential for the Court to come to a conclusion that "sufficient cause" had been made out by the defendant/judgement debtor.



Existence of sufficient cause is *sine qua non* for exercising the jurisdiction to condone the delay. Not even a single sentence is found in the order to that effect. Apart from that, it is clear from a reading of the order that no opportunity had been granted either to the petitioner or to the respondent to make their submissions. Since the order of the learned II Additional Sub Judge, Cuddalore in I.A.No.155 of 2022 dated 16.02.2023 is unreasoned and despite the vehement plea of Mr.T.S.Baskaran that this Court should set aside the said order and dismiss the condone delay petition, I am not inclined to adopt that course of action. This is because I feel that both the parties must be given an opportunity to agitate the matter before the learned II Additional Sub Judge, Cuddalore.

10. As the trial Court order is unreasoned and laconic, the same is set aside. The petition in I.A.No.155 of 2022 is restored to the file of the II Additional Sub Judge, Cuddalore. The civil revision petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

11. Both the parties, by consent, agreed that they will appear before



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the learned II Additional Sub Judge, Cuddalore on 12.08.2024. The matter is remitted to the learned II Additional Sub Judge, Cuddalore to hear the arguments and pass orders afresh in the application. The learned Judge is requested to act on the web copy of this order and need not insist for the certified copy of the same. The web copy may be produced either by the civil revision petitioner or the respondent. As the date of hearing has already been fixed by this court by consent of both sides, the trial Court is requested not to issue a fresh notice to the parties concerned to appear on the said date of hearing.

24.07.2024

Index:Yes/No

Neutral Citation : Yes / No

Speaking order / Non-speaking orders

To:

- 1.The II Additional Sub Judge
Cuddalore.
- 2.The Section Officer,
VR Section, High Court, Chennai.



WEB COPY



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V.LAKSHMINARAYANAN,J.

ds

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