



CRP.No.3965 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.(PD).No.3965 of 2022
and CMP.No.20650 of 2022

A.Sankar

...Petitioner/Defendant

Vs.

M.Kannan

...Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under section 115 of Code of Civil Procedure, to call for the records relating to the fair and decreetal order dated 01.08.2022 made in I.A.No.915 of 2017 in O.S.No.85 of 2015 on the file of the District Munsif Court, Jeyamkondam.

For Petitioner : M/S.Usha Raman
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed as against the order dated 01.08.2022 passed in I.A.No.915 of 2017 in O.S.No.85 of 2015 on the file of the District Munsif Court, Jeyamkondam, wherein the petitioner filed petition under Section 5 of Limitation Act to condone the delay of 9 days to set aside the exparte decree passed against him. The said application was dismissed. Challenging the said order, the present civil revision petition has been filed by



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the petitioner.

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2. Respondent is the plaintiff. He filed suit in O.S.No.85 of 2015 for the relief of suit for bare injunction. The suit was posted on 21.07.2017. It is stated that since the defendant has met with an accident, so he was unable to appear before the court and thereby ex-parte order was passed against him. Since, he met with an accident, delay of 9 days occurred in filing ex-parte decree petition before the trial Court.

3. Before the trial Court, in the said petition, the respondent/plaintiff has not filed any counter. The learned trial judge after referring Order 9 Rule 13 of CPC that the defendant has not filed written statement within 90 days from the date of serving of summons. Thereafter, even after ample chances given, he has not filed written statement and thereby, the trial Court passed ex-parte decree on 21.07.2017. The petitioner has not stated any valid reasons for the delay of 9 days. Hence this petition was dismissed.

4. The learned counsel for the petitioner/defendant would contend that he already filed petition on 30.08.2017 and the matter was adjourned without passing any orders, that is why he approached this Court by filing CRP.No.1174 of 2022 for early disposal of the suit and the pending



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application before the trial Court. The said revision petition was disposed of, with a direction to dispose the IA.No.915 of 2017 within one month. Immediately, the trial Court has dismissed the I.A on 01.08.2022. Therefore, the order passed by the trial Court is liable to be set aside and opportunity was not given to the petitioner/defendant to put forth the case.

5. Despite notice served to the respondent/plaintiff, none appeared and his name also printed in the cause list. Therefore, this Court is inclined to pass order based on the arguments of the petitioner/defendant.

6. According to the petitioner, he is the defendant in the suit and the respondent herein has filed the main suit for the relief of bare injunction and the case was posted for hearing on 21.07.2017 and he met with an accident on the date and unable to attend the hearing and ex-parte decree was passed against him. There is a delay of 9 days in filing petition to set aside the ex-parte decree and he filed petition before the trial Court and the trial Court dismissed the petition.

7. It is seen that the respondent/plaintiff has not even filed counter in I.A.No.915 of 2017 and the delay is only 9 days. According to the petitioner/defendant, he has met with an accident and thereby unable to attend



the Court and also there is a delay of 9 days in filing the application to set aside the ex-parte decree. In the absence of any counter filed by the respondent/plaintiff, the trial Court considering the reasons stated by the petitioner ought to have allowed the application and the trial Court ought to have taken lenient view, however unfortunately, the trial Court has dismissed I.A.No.915 of 2017.

8. The defendant filed written statement along with condone delay petition and also filed petition under Order 9 Rule 13 of CPC. In the condone delay petition stated that he met with an accident and thereby there is a delay of 9 days in filing the petition to set aside the ex-parte decree. This aspect was not considered by the trial Court, and erroneously dismissed the I.A. In order to give fair chance to the defendant to put forth his defence and to avoid multiplicity of proceedings and to meet the ends of Justice, this petition has to be allowed and the order passed by the trial Court is liable to be set aside.

9. In the result, this civil revision petition is allowed. The order passed in I.A.No.915 of 2017 in O.S.No.85 of 2015 on the file of the District Munsif Court, Jeyamkondam dated 01.08.2022 is set aside and the I.A.No.915 of 2017 is allowed. The trial Court is directed to number the ex-parte set aside petition otherwise in order and to dispose of the Order 9 Rule 13 of CPC



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petition within a period of one month from the date of numbering the petition.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/non-speaking order

mpa

To

The District Munsiff Court, Jeyamkondam.

P.DHANABAL, J.,

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