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CRP. No.3975 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

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THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. (PD) No.3975 of 2019

& CMP No.26165 of 2019

N.M.Kajanajimudeen

... Petitioner

Vs.

1.Azad

2.Razeetha Begum

.. respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the learned District Munsif, Gobichettipalayam passed in I.A.No.961 of 2018 in OS No.251 of 2015.

For Petitioner	: Mr.Nandha Kumar for M/s.Eswar Kumar & Co
For Respondents	: No appearance

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order of the learned District Munsif, Gobichettipalayam passed in I.A.No.961 of 2018 in OS No.251 of 2015.



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2. The petitioner is the plaintiff and the respondents are the defendants in a suit in OS.No.251 of 2015. The suit was filed for recovery of amount due under the Hand Loan alleged to have been provided by him to the defendants. In the suit, the defendants were set *ex parte* on 13.08.2016 and an *ex parte* decree was passed on 10.10.2017. The defendants came to know about *ex parte* decree only after they were served with notice in the execution proceedings filed by the plaintiff. Then they filed an application under Section 5 of the Limitation Act, seeking to condone the delay of 297 days in filing an application under Order 9 Rule 13 of CPC.

3. It is the contention of the defendants that the delay of 297 days in filing a petition under Order 9 Rule 13 of CPC is not willful nor wanton and the same is beyond their control. The petitioner /plaintiff resisted the said petition by filing a counter.

4. Having heard the learned counsel on either side and on perusal of the records, the trial Court opined that the reasons stated by the defendants to condone the delay is acceptable and reasonable and as the plaintiff would suffer if the delay is condoned, he can be compensated in terms and



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accordingly, allowed the petition on payment of cost of Rs.1000/- to the plaintiff by defendants on or before 14.10.2019.

5. Aggrieved by the order dated 06.09.2019, in condoning the delay of 297 days in IA.No.961 of 2018, the present CRP has been filed by the petitioner/plaintiff.

6. Notice was served to the respondents by way of substituted service but there is no appearance on behalf of the respondents.

7. Accordingly, this Court is proceeded with the matter based on the material available on record and considering the fact that CRP pertaining to the year 2019 and suit is of the year 2015.

8. The learned counsel for the petitioner submits that the trial Court committed an error in allowing the petition to condone the delay of 297 days in filing an application to set aside the *ex parte* decree passed on 10.10.2017. The learned counsel further submits that the respondents have not assigned a valid reason under the law for condoning the delay by the



trial Court. The learned counsel further contends that the trial Court failed to consider the fact that the suit had already attained finality and consequently, execution petition had been filed in E.P.No37 of 2018. It is the further contention of the learned counsel for the petitioner that the petition has been filed only to drag on the proceedings in order to frustrate the execution proceedings and to restrain the petitioner to enjoy the fruits of the decree. Though the defendants had received summons in the suit two years ago, but they did not choose to appear before the trial Court and as the respondents failed to show any sufficient cause to condone the delay of 297 days, the order of the trial court in condoning the said delay is illegal and against the settled proposition of law laid down by this Court as well as the Apex Court and therefore, he sought to set aside the order dated 06.09.2019 in I.A.No.961 of 2018 and prayed to allow the present CRP.

9. On a perusal of the records, it appears that in the suit filed by the petitioner for recovery of amount, the respondents were served with summons and they entered appearance through their counsel. It is the case of the respondents that the counsel has informed them by way of post card about the filing of the written statement, but unfortunately, the post card did



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not reach the respondents and it might have been lost in transit. Since, the respondents did not receive the post card sent by the counsel, they were completely not aware of the proceedings and they could not instruct their counsel to prepare the written statement and file before the Court. Due to failure to file written statement, the respondents were set *ex parte* on 13.08.2016 and an *ex parte* decree was passed on 10.10.2017. Subsequently, the petitioner instituted execution proceedings. After receipt of the notice in the execution proceedings only, the respondents approached the trial Court with a petition filed under Order 9 Rule 13 of CPC to set aside the *ex parte* decree. Along with the petition, they also filed an application under Section 5 of the Limitation Act to condone the delay of 297 days in filing the petition under Order 9 Rule 13 of CPC.

10. Though the petitioner vehemently resisted the petition filed for condonation of delay of 297 days, the trial Court came to a conclusion that if the petition is allowed, the plaintiff would be put to suffer, and accordingly, allowed the said petition on payment of cost of Rs.1000/- payable to the petitioner. While allowing the petition filed by the respondents under Section 5 of the Limitation Act, seeking to condone the delay of 297 days, the trial



Court ought to have considered the version of the petitioner that there is no sufficient reason put forth by the respondents to explain the delay of 297 days.

11. The reasons stated by the respondents before the trial Court is that they did not receive the post card sent by their counsel about the suit proceedings, wherein, written statement has to be filed. In fact, there was no proof as regards the version of the respondents. It is the responsibility of the parties to engage counsels on their behalf and to approach their counsels frequently to know the status of the case from time to time. It is also the duty of the Advocates to inform the case status to the parties on approach of their clients.

12. In the present case, except saying that they could not properly instruct their counsel to file a written statement within the time as they could not receive the post card sent by their counsel, no valid reasons have been stated by them to condone the delay. This Court and the Apex Court time and again have categorically held that to condone the delay petitions filed under Section 5 of the Limitation Act, the parties have to show



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sufficient and convincing reasons to condone the delay.

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13. In the present case, in the considered opinion of this Court, no sufficient cause is shown by the respondents to condone the delay of 297 days delay. Therefore, the order dated 06.09.2019 of the trial Court in condoning the delay of 297 days is unsustainable and the same is liable to be set aside.

14. Accordingly, the Civil Revision Petition is allowed and the order dated 06.09.2019 passed in IA No.961 of 2018 in O.S.No.251 of 2015 by learned District Munsif, Gobichettipalayam is hereby set aside.

No costs.

Consequently, connected miscellaneous petition is closed.

04.07.2024

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Index : Yes / No

Internet : Yes / No

To

The learned District Munsif, Gobichettipalayam



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BATTU DEVANAND.J.,
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