



C.R.P.(MD)No.1498 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.1498 of 2023

and

CMP (MD) No.7372 of 2023

N.Subburam : Petitioner/Petitioner/
Defendant

Vs.

R.Raja Sudhakaran : Respondents/Respondents/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the entire records in connection with Interlocutory Application in IA No.358 of 2021 in OS No.236 of 2015 passed by the 1st Additional District Judge, Madurai, dated 15/12/2022 and set aside the same.

For Petitioner : Mr.Niranjan S.Kumar

For Respondent : Mr.K.Jagadeesan

O R D E R

This civil revision petition has been filed seeking to set aside order, dated 15/12/2022 passed the IA No.358 of 2021 in OS No.236 of 2015 passed by the 1st Additional District Judge, Madurai.



C.R.P.(MD)No.1498 of 2023

2. The facts in brief:-

A suit in O.S No.236 of 2015 was filed by the respondent herein seeking recovery of Rs.28,63,130/- along with subsequent interest during the business transaction between the parties. Now the petitioner entered appearance through his Advocate. But later failed to appear. So, an *ex-parte* decree was passed, on 07/02/2017. Statement was filed as early as, on 09/02/2016. Later EP No.177 of 2019 was filed on the file of the I Additional District Judge, Madurai. The counsel did not inform him about the *ex-parte order* and decree passed. On coming to know about the *ex-parte* decree, he filed IA No.358 of 2021 before the I Additional District Judge, Madurai to condone the delay of 1758 days under section 5 of the Limitation Act with the following averments:-

He received Rs.20,00,000/- as loan amount from the respondent. Out of Rs.20,00,000/-, Rs.7,80,000/- was already paid by him. Later, he paid Rs.80,000/- in the month of August, Rs.2,00,000/- in the month of September and Rs.3,00,000/- in the month of October. He entered into loan transaction only with Kaliappan and never with the plaintiff. Since the petitioner lodged a complaint against Kaliappan before the SS Colony Police Station, he



C.R.P.(MD)No.1498 of 2023

instigated the present complaint to file the suit. The security document issued by the petitioner was misused by the present plaintiff. Apart from that, he has also stated that he was affected by paralysis in 2016. So, he could not contact his Advocate in time. Only after receiving the notice in EP proceedings, he came to know about the *ex-parte* order and decree.

3.That was resisted by the respondent stating that the delay is not properly explained; Only after receiving the notice in the EP proceedings, the present petition was filed; Actually part amount was settled by the petitioner.

4.After hearing both sides, finding that no proper reason was assigned by the petitioner to condone the delay, the trial court dismissed the petition.

5.Against which, this civil revision petition has been preferred.

6.Heard both sides.

7.The suit is of the year 2015. *Ex-parte* decree was passes as early as on 07/02/2017. Even though, the



C.R.P.(MD)No.1498 of 2023

written statement was filed by the petitioner to see the further process, he remained silent.

8. According to the petitioner, since he was affected by paralysis, he could not contact his Advocate. But the above said fact is not supported by any evidence. No medical record was also filed by the petitioner. Even before this Court along with the petition, no medical records have been produced. So the ground, on which this petition came to be filed is not supported by any documentary evidence.

9. Now the learned counsel appearing for the petitioner would rely upon the order passed by this Court to direct the petitioner to deposit 50% of the decree amount. The decree amount of 50% was also deposited. On that account, further proceedings and EP proceedings were stayed. Now that cannot be taken advantage by the petitioner, that has already paid 50% of the decree amount. But the point for consideration is whether the delay has been properly explained by the petitioner.

10. As mentioned above, mere bald statement that he was affected by paralysis, no other convincing reason is stated. As mentioned above, even the reason for the



C.R.P.(MD)No.1498 of 2023

delay is not supported by any documentary evidence.

WEB COPY

11. When there is huge delay, unless there is proper reason that too acceptable in nature is submitted, the delay cannot be condoned. Considering the oldness of the matter, I am of the considered view that the petition has been filed without any proper reason, which was rightly dismissed by the trial court. In find no reason to interfere into the order of the trial court.

12. In the result, this civil revision petition is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

22/02/2024

Index: Yes/No
Internet: Yes/No
er

To,

1. The 1st Additional District Judge,
Madurai.
2. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.1498 of 2023

G.ILANGOVAN, J

er

C.R.P (MD) No.1498 of 2023

22/02/2024