



C.R.P.(MD)No.2214 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.11.2023

PRONOUNCED ON: 09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2214 of 2022

and

C.M.P.(MD)No.10342 of 2022

V.Ramraj

: Petitioner/Petitioner/
Defendant

Vs.

C.Santhanakrishnan

: Respondent/Respondent/
Plaintiff

PRAYER:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 04.02.2021, passed in I.A.No.123 of 2018 in O.S.No.161 of 2010, on the file of the learned Principal District Judge, Thanjavur.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.N.Balakrishnan



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.123 of 2018 in O.S.No.161 of 2010, dated 04.02.2021, on the file of the Principal District Court, Thanjavur, dismissing the petition filed under Section 5 of the Indian Limitation Act.

2. The respondent as plaintiff has filed the above suit for recovery of Rs.7,99,900/- borrowed by the revision petitioner / defendant on 21.05.2007 with interest and costs. The defendant has filed a written statement and was contesting the suit. During trial, the defendant has remained exparte and on that basis, exparte judgment and decree came to be passed on 29.06.2012. Since the judgment debtor / defendant has not paid the decree amount, the decree holder / plaintiff has laid the executive petition. The judgment debtor / defendant, by alleging that he has received the notice in the execution petition in the month of March 2018, filed an application for setting aside the exparte decree dated 29.06.2012 along with an application to condone the delay of 2260 days in filing the application for setting aside the exparte decree. The



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respondent has filed a counter statement raising serious objections. The learned Principal District Judge, after enquiry, has passed the impugned order dated 04.02.2021, dismissing the petition filed under Section 5 of the Limitation Act. Aggrieved by the order of dismissal, the defendant has come forward with the present Civil Revision Petition.

3. The case of the revision petitioner / defendant is that the case was posted for cross-examination of the plaintiff on 29.06.2012, that since there was no representation on the defendant's side, he was called absent and set exparte on 29.06.2012, that the defendant has approached the plaintiff and negotiated, that the plaintiff had agreed for mediation and stated that he will withdraw the suit claim, that since the suit claim was based on cable T.V., connection and sharing for different areas, the respondent / plaintiff promised to withdraw the suit on consulting the other cable T.V., operators, that the petitioner / defendant, believing the words of the respondent / plaintiff, has not proceeded with the suit, that though the exparte decree was passed on 29.06.2012, more than 20 other proceedings were initiated by the respondent, that the defendant believed that the suit claim was settled upon the promise of the plaintiff to withdraw the suit, that the defendant has received notice for execution of



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the exparte decree during the month of March 2018, that the defendant has immediately approached the plaintiff and enquired about the settlement, but he was stating now and then and avoiding the defendant under some pretext or the other, that the defendant has a good case on trial, that the defendant will be put to irreparable loss and hardship, if exparte decree is not set aside, that there occurred a delay of 2260 days in filing the petition for setting aside the exparte decree and judgment dated 29.06.2012, that the delay is neither wilful nor wanton and that the defendant will be seriously put to loss and hardship, if the delay is not condoned.

4. The defence of the respondent / plaintiff is that the defendant has borrowed a sum of Rs.7,99,900/- from the plaintiff and executed relevant records, that since the defendant failed to repay the amount, the plaintiff has filed the above suit for recovery of money, that the defendant failed to contest the case and allowed the suit to be decreed exparte, that the defendant, after receiving the notice in execution petition, approached the plaintiff and promised to pay the money, that the defendant has filed the present petition with ulterior motive to drag on the proceedings, that the plaintiff has not agreed to withdraw the suit



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claim at any point of time, that there was no such mediation in this regard, that the suit claim is not based on the cable T.V., connection, that the plaintiff has not initiated 20 proceedings as mentioned by the defendant, that the intention of the defendant is only to drag on the matter endlessly, that the reason stated in the affidavit in support of the petition to condone the delay is not supported by any documentary evidence, that the defendant has not approached this Court with clean hands, that the reasons adduced by the defendant in the affidavit are not correct and not sufficient to condone the delay of 2260 days delay, that the defendant has to explain each and every day's delay and that the petitioner's present attempt is only to drag on the proceedings and therefore, the petition is liable to be dismissed.

5. During enquiry, the defendant as well as the plaintiff have adduced neither oral nor documentary evidence. The main contention of the revision petitioner / defendant is that after filing of the written statement, he approached the plaintiff and negotiated for the settlement, that the plaintiff has agreed for mediation and stated that he will withdraw the suit claim. Except the above averments, the defendant has not elaborated anything further. The defendant has nowhere averred



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what was the settlement negotiated, the mediation terms and the basis on which the plaintiff has agreed to withdraw the suit claim.

6. It is evident from the records that the above suit was posted on 05.06.2012 for P.W.1 cross-examination, that since the defendant has not chosen to cross-examine P.W.1, the case was adjourned to 12.06.2012 for plaintiff's further evidence by closing the cross-examination of P.W.1, that the suit was then adjourned to 18.06.2012 for the defendant's side evidence and the case was again adjourned to 20.06.2012 for the defendant's side evidence, that since the defendant has not turned up, he was called absent and set exparte and that subsequently, exparte decree came to be passed on 29.06.2012.

7. As rightly observed by the learned trial Judge, the defendant has filed the petition under Section 5 of the Limitation Act to condone the delay of 2260 days ie., 6 years 2 months and 10 days. No doubt, as rightly contended by the learned Counsel for the plaintiff, the delay is very inordinate and the defendant has not assigned any other sufficient cause for the said delay.



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8. Moreover, as already pointed out, the defendant has alleged that he received the execution notice during the month of March 2018 and immediately he approached the plaintiff and enquired about the settlement. But it is evident from the impugned order that the petition to condone the delay under Section 5 of the Limitation Act was filed only on 06.10.2018, 7 months after the receipt of the execution notice, as claimed by the defendant. The defendant has not assigned any reason or ground for not filing the delay condonation petition immediately after receiving the execution notice till 06.10.2018, the date on which the above petition came to be filed.

9. It is settled law that sufficient cause as contemplated under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party claiming condonation. In the case on hand, the defendant has not produced any iota of evidence to prove the sufficient cause or the reason so as to attract Section 5 of the Limitation Act. As rightly observed by the learned trial Judge, the defendant has not canvassed any reason or ground to condone the inordinate delay of more than 6 years.



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10. Considering the above, the impugned order dismissing the petition filed under Section 5 of the Limitation Act cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

09.02.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The Principal District Court, Thanjavur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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