



C.R.P. No.433 of 2022

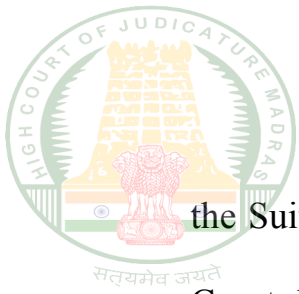
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ORDER

The Civil Revision Petition has been preferred as against the dismissal order passed in I.A. No.1 of 2020 in O.S. No.1124 of 2014 on the file of III Additional Sub Court, Coimbatore dated 05.10.2021, wherein the petitioner / 1st Defendant herein has filed an application to set aside the exparte decree along with petition under Section 5 of the Limitation Act to condone delay of 506 days in filing a petition to set aside the exparte decree and the same was dismissed. Against the said order, the present Civil Revision Petition is filed.

2. The case of the petitioner is that he is the 1st defendant in the Suit and the respondents / Plaintiffs have filed a Suit for damages and the same was decreed exparte due to non-filing of written statement. Thereafter, the respondents have filed an execution petition and the same is posted for sale of property. At that stage, the petitioner has filed a petition to condone delay to file a petition for setting aside the exparte decree before the trial Court and the same was dismissed.

3. The learned counsel appearing for the petitioner would contend that the petitioner is the 1st defendant in the Suit and the respondents have filed



C.R.P. No.433 of 2022

the Suit for damages. Due to the non-appearance of the defendants, the trial Court decree the suit exparte dated 11.06.2015. Thereafter, the respondents / Plaintiffs filed an execution petition for attachment and to sale of the property. Only on service of notice in the above execution petition, the petitioner came to know about the exparte decree. When the Suit was posted for filing written statement on 09.02.2015, the respondents submitted that they have no grievance against the petitioner and to withdraw the Suit against the defendants. Believing the submission of the respondents that they will withdraw the Suit, the petitioner went to Kerala for taking treatment for Jaundice in the month of May 2015 till September 2015. As he was in Kerala for taking treatment, he was unable to appear before the trial Court and unable to file written statement, but the trial Court dismissed the suit as exparte. When the petitioner filed petition to condone the delay of 506 days in filing exparte decree set aside petition the same was dismissed. Therefore, the order passed by the Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondents would contend that the respondents have filed a Suit for damages. In spite of notice served on the defendants, they did not appear and did not file written statement and hence, the Suit was decreed on 11.06.2015 and thereafter, the respondents



C.R.P. No.433 of 2022

filed a petition to execute the decree. In that execution petition, the case was posted for sale of the property and for production of sale papers. Even in the execution petition, the petitioner was set exparte and only to delay the execution proceedings, the petitioner has filed the petition. There is a delay of 506 days and the same has not been properly explained. Therefore, the order passed by the Trial Court is in order and hence the present civil revision petition is liable to be dismissed.

5. Heard both sides and perused all the materials available on record.

6. It is an admitted fact that the Suit is filed for damages and the trial Court also decreed the Suit exparte. After the exparte decree, the case is posted for execution of decree and the petitioner has also produced the sale papers. At this stage, the petitioner filed this petition to set aside the exparte decree along with delay petition for 506 days . Considering the nature of Suit, the prayer sought in the suit and the reasons stated in the affidavit that due to his illness, the petitioner was unable to appear before the trial Court as he was taking treatment at Kerala for Jaundice and though the petitioner has not produced any documents, in order to meet ends of justice and to give a fair chance to the petitioner, it is appropriate to allow this petition. However



C.R.P. No.433 of 2022

the respondent also to be compensated due to the delay caused by the petitioner. Therefore the respondent has to be compensated by way of costs.

The trial Court also passed detailed order, but failed to consider the nature of suit and the reasons stated by the petitioner that he was taking treatment for his illness at Kerala, thereby unable to attend the Court. Therefore the order passed by the trial Court is liable to be set aside.

7. Accordingly, the fair and decretal order passed in I.A.No.1 of 2020 in O.S.No.1124 of 2014 on the file of the III Additional Sub Court, Coimbatore dated 15.10.2021 is set aside and the Civil Revision Petition is allowed on payment of cost of **Rs.15,000/- (Rupees Fifteen Thousand only) to be paid by the petitioner to the respondent though the learned counsel appearing for the respondents within 15 days from the date of receipt of a copy of this order.** Consequently, the connected miscellaneous petition is closed.

10.03.2025

Index : Yes/No
Speaking order/non-speaking order
mjs

To

The III Additional Sub Court, Coimbatore.



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C.R.P. No.433 of 2022

P.DHANABAL, J.,

mjs

CRP. No.433 of 2022

10.03.2025