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C.R.P.No.1622 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1622 of 2022

P.Sandeep

.. Petitioner

Versus

1.A.Vijay Ratheesh

2.P.Arjunan

.. Respondents

Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India against the fair and decreetal order dated 17.03.2022 in I.A.No.1 of 2019 in I.A.No.10243 of 2018 in O.S.No.3066 of 2018 on the file of the I Assistant City Civil Court at Chennai.

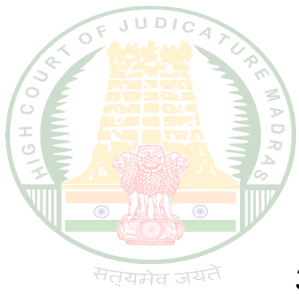
For Petitioner : Mr.P.Sunil,
for Mr.K.P.Shanthosh

For Respondents : Mr.R.Balaguruswamy

ORDER

The civil revision petitioner is the plaintiff in the suit. The revision impugnes the correctness of the order passed by the learned I Assistant City Civil Judge in I.A.No.1 of 2019 in I.A.No.10243 of 2018 in O.S.No.3066 of 2018.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.



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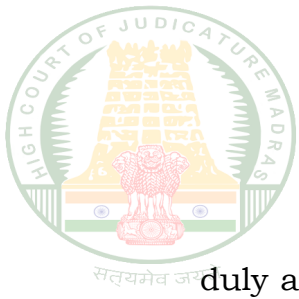
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3. O.S.No.3066 of 2018 is an under-chapter suit. It is presented on the foot of a promissory note for recovery of a sum of Rs.4,00,000/- together with interest. The plaintiff claimed that, despite a demand to repay the amount, the first defendant, who is the executant of the pro-note, and the second defendant, who is its oral guarantor, did not honor the same.

4. Summons were served on the defendants as contemplated under Order XXXVII.

5. The defendants entered appearance through a counsel. They also gave a notice of appearance. Thereafter, they filed an application in I.A.No.10243 of 2018 seeking leave to defend.

6. In the counter to the said application, the plaintiff pleaded that the leave to defend application is not maintainable, since the defendants have not filed the same within 10 days from the date of service of summons for judgment. He pointed out that summons for judgment had been served on 30.07.2018, and the defendants ought to have filed the leave to defend application within 10 days. However, the leave to defend application has been filed only on 16.08.2018, and the same was not



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duly accompanied by an application to condone the delay in applying for leave to defend the suit, as prescribed under Order XXXVII Rule 3(7).

7. In order to rectify the error, the defendants took out an application seeking the court to condone the delay of 6 days in filing the leave to defend application. This application was numbered as I.A.No.1 of 2019. This application too, was resisted by the plaintiff. He pleaded that the defendants cannot file an application for leave to defend, without having filed a prior application under Order XXXVII Rule 3(7) of the Code of Civil Procedure. He pleaded that a valuable right has crystalised in his favour on account of the defendants not having filed the application under Order 37 Rule 3(5) in time.

8. The learned Trial Judge agreed with the defendants and condoned the delay of 6 days in filing the leave to defend application. Aggrieved by the same, the plaintiff is on revision before me.

9. I heard Mr.P.Sunil for the civil revision petitioner and Mr.Balaguruswamy for the respondents.

10. Mr.P.Sunil, placing reliance upon the judgment of the Punjab and Haryana High Court in **Sandeep Kumar v. Satpal,**



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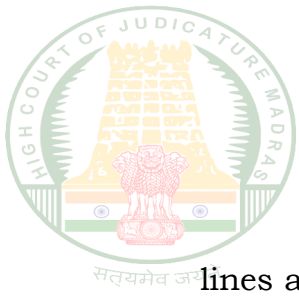
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Manu/PH/1703/2017, argues that an application under Order XXXVII Rule 3(5) is not maintainable, when it is not accompanied by an application under Order XXXVII Rule 3(7) of the Code of Civil Procedure. He urges that as the application for leave to defend was filed on 16.08.2018, and the application filed to condone the delay in filing the application for leave to defend having been presented after 372 days on 21.08.2019, the court below erred in not treating the period of delay in a proper perspective.

11. Per contra, Mr.Balagurusamy urged that the defendants were not in station after having given him instructions to appear in the matter. This is a sufficient cause for the purpose of condonation of delay. He further points out as the learned Trial Judge has exercised his discretion and condoned the delay. Therefore, the revision against the said order is not maintainable. Hence, he prays for dismissal.

12. I have considered the submissions made on either side and have gone through the records.

13. The suit was filed under Order XXXVII of the Code of Civil Procedure. Order XXXVII is a special code enacted for the purpose of certain suits, which are covered under Order XXXVII Rule 1(2). The time-



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lines and the procedure, which have to be followed in the said suits, have been statutorily enumerated by the Parliament. Once summons are served as contemplated under Rule 2 of Order XXXVII, it is the role of the defendants to give a notice of appearance to the said proceedings to the plaintiff, and to file the same in the court. Once the notice of appearance is given in terms of Order XXXVII Rule 3(3), it becomes a burden on the plaintiff to serve the summons for judgment under Form 4A of the Code under Order XXXVII Rule 3(4). Once the summons for judgment is served, the defendants are entitled to file an application seeking leave to defend, as contemplated under Rule 3(5).

14. The period of limitation to file an application seeking leave to defend is 10 days from the date of service of summons for judgment. The Code has also contemplated a situation, whereby the defendants, for sufficient cause have not filed an application for leave to defend under Order XXXVII Rule 3(5), the power to condone the delay is given under Order XXXVII Rule 3(7) of the Code.

15. At this stage, I can usefully refer to Section 5 of the Limitation Act.



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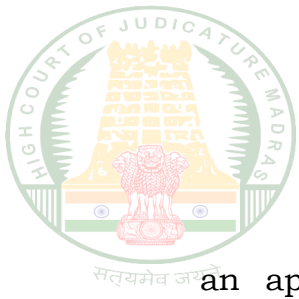
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16. Let us take a situation, where a suit has been decreed *exparte*. Thereafter, the defendant files an application under Order IX Rule 13 after a prescribed period. If the application under Section 5 of the Limitation Act is filed, and I were to accept Mr.Sunil's argument, then the period of limitation will commence only from the date of filing of the application under Section 5 of the Limitation Act, and not from the date of filing the application under Order IX Rule 13.

17. The law and practice is to the contrary. A reading of Section 5 of the Limitation Act shows that an applicant has to satisfy the court that he has sufficient cause for not **preferring** an appeal, or making an application within such period. This shows that limitation gets arrested on the presentation of the appeal which is out of time, or not making an application beyond the prescribed period. Hence, by reference to the Limitation Act too, we can arrive at a conclusion in the present case.

18. Having stated these preliminaries, let us now consider the arguments of the respective parties.

19. According to Mr.P.Sunil, the defendants ought to have filed the leave to defend application on or before 10.08.2018. However, they filed it only on 16.08.2018. This application not having been accompanied with



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an application under Order XXXVII Rule 3(7), he states that the application is not maintainable. He relies upon the judgment in **Sandeep Kumar's** case cited supra.

20. At a first glance, it would be seen that **Sandeep Kumar's** case supports the case of Mr.P.Sunil. However, a careful reading of the judgment shows that it is not a precedent for the proposition, which Mr.P.Sunil presses forward. That was a case where a leave to defend application was filed after delay. However, the learned Trial Judge, instead of calling upon the defendant to file an application under Order XXXVII Rule 3(7), straight away took the application for leave to defend and allowed the same. It was in those circumstances that the learned Judge of the Punjab and Haryana High Court had held that the learned Trial Judge could not have considered the application for leave to defend without an application for condonation of delay.

21. In the case before us, the leave to defend application is still pending. Even before the learned Trial Judge had decided the application, when the error was pointed out by Mr.P.Sunil in the trial court, the defendants rectified the same by filing an application under Order XXXVII Rule 3(7). This minor difference in the case makes an ocean of difference.



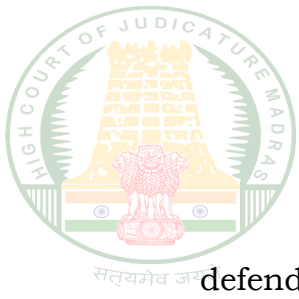
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22. The Code of Civil Procedure is a Code of Fairness. It is not a procrustean bed to chop off the head or foot of a party for not having strictly complied with the requirements of the Code. The Code itself contemplates a situation enabling the defendants to give sufficient cause for not having filed the leave to defend application in time. The defendants' reason for not having filed the same in time is that, they were not in station. The delay also is not excessive but only for six days. That being the position, I do not find any error in the decision of the learned Trial Judge in allowing the application.

23. At this stage, Mr.P.Sunil points out that the delay is not six days but 372 days. He calculates the period from 11.08.2018 to 21.09.2019, when the application under Order XXXVII Rule 3(7) came to be filed. According to him, though the application for leave to defend was filed on 16.08.2018, the Court should have calculated the delay till the date on which the application to condone the delay was finally filed ie., on 21.09.2019.

24. The answer to Mr.P.Sunil's objection is found under Order XXXVII Rule 3(7) itself. The Code demands that the defendant should explain the delay in applying for leave to defend the suit, which implies that the delay will be calculated from the date on which the summons for judgment was given till the date on which an application for leave to



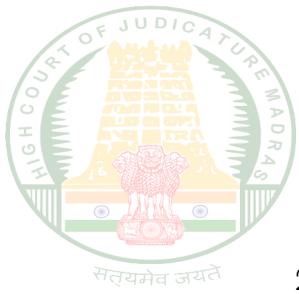
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defend was filed, excluding the period of 10 days contemplated under Order XXXVII Rule 3(5). If that is the interpretation, which is to be given, then the number of days delay would only be calculated from the date on which summons for judgment was served till the date on which an application for leave to defend was filed. The fact that the leave to defend application was not accompanied by an application under Order XXXVII Rule 3(7), does not mean limitation continues to run. The minute the defendant files an application under Order XXXVII Rule 3(5), limitation is frozen. Once an application is filed and the period is frozen, the duty of the defendant is only to explain the delay from the summons for judgment till the date of filing of the application under Order XXXVII Rule 3(5).

25. The suit is on the foot of promissory note. The suit was filed in the year 2018 and 7 years have gone by. The plaintiff has been knocking the doors of the court allegedly, on account of the fact that the defendants have not made good their promise to repay.

26. I notice that the learned Trial Judge has condoned the delay without imposing any conditions. Hence, I am of the view that the condonation of delay need not be interfered with but a condition should be imposed in order to ensure that the defendants cooperate with the Court for the purpose of disposal of the suit.



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27. In the light of the above discussion, the order condoning the delay is sustained with a condition that the defendants will deposit a sum of Rs.1,00,000/- within a period of eight weeks from today. In case, the defendants fail to comply with the aforesaid condition, then they will not be entitled to the benefit of condonation of delay, and the plaintiff will be entitled to a decree in terms of Order XXXVII Rule 3(6)(a) of the Code. The court should treat the default as if the defendants had not filed an application for leave to defend or an application to condone the delay in terms of Order XXXVII Rule 3(7).

28. In the light of the above discussion, the civil revision petition is ordered in the above terms. No costs.

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

1.The I Assistant City Civil Court at Chennai.



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V.LAKSHMINARAYANAN, J.

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