



C.R.P.No.4383 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.02.2025

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.4383 of 2022

A.Alagesan,
S/o Ayyadurai,
Electricity District Circle,
TNEB Office Quarters,
New Natham road,
Madurai – 625 002.

.... Petitioner

vs

G.S.Jayapal,
S/o Late G.S.Samiyyer,
D.No.98/32, Budda Nagaiyar Street,
Salem-636 001

.... Respondent

Civil Revision Petition filed under Section 115 of CPC against the impugned order dated 11.04.2022 passed in E.A.No.1 of 2020 in E.P.No.66/2019 in O.S.No.870 of 2018 on the file of Court of I Additional Subordinate Judge, Salem.

For Petitioner : Mr.R.C.Ramesh

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed challenging the dismissal order dated 11.04.2022 passed in R.E.A.No.1/2022, seeking to condone the delay of



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202 days in filing a petition to set aside an exparte order dated 04.02.2020

passed in REP.No.66/2019 in O.S.No.70/2018.

2. The brief facts of the case is as follows:

The petitioner is the defendant/judgment debtor in O.S.No.70/2018 on the file of the I Additional Sub-Court, Salem. O.S.No.70/2018 was filed by the respondent against the petitioner for recovery of money of Rs.4 lakhs with interest at 12% per annum. The Sub Court, by order dated 02.08.2018, decreed the suit directing the petitioner/decreed holder/ defendant to pay an amount of Rs.6,52,733/- with interest and subsequent interest, totally a sum of Rs.6,91,998/- with costs Rs.28,624/-. The respondent/plaintiff had filed REP.No.66/2019 seeking to attach the salary of the petitioner to the tune of Rs.25,000/- per month out of the take home salary of Rs.76,000/-. The petitioner had entered appearance through a counsel. However, due to a communication gab, the counsel did not appear before the Court and the petitioner was set exparte by order dated 04.02.2020 during Covid pandemic. Thereafter, by order dated 20.07.2020, a direction was issued to the garnishee to attach a sum of Rs.20,000/- per mensum out of the salary of the petitioner for 24 months. The petitioner filed REA.No.1/2020 seeking to set aside the exparte order with an



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application to condone the delay of 202 days in filing the petition. During Covid Pandemic, he was imposed with certain heavy duties and due to restriction, there was no transport facilities and thus, he was unable to file a petition to set aside the exparte decree. Therefore, there has been a delay of 202 days in filing the petition to set aside the exparte decree. Further, the Execution Court, without assigning any reason had dismissed the application seeking to set aside the exparte order dated 04.02.2020. Challenging the same, the present revision had been filed.

3. Learned counsel for the petitioner would submit that the petitioner was set exparte on 04.02.2020. Thereafter, due to Covid pandemic, the petitioner was unable to file an application within the time of 30 days. Since, he being a Government servant and due to the restriction imposed, he was able to approach the counsel only on 26.08.2020 and an application to set aside the exparte order was filed with a delay of 202 days. Despite the petitioner stating reasons, the Execution Court, without assigning any reason, had dismissed the petition. He would further submit that as on date, the exparte decree in O.S.No.70/2018 has been set aside and the suit has now been taken up for trial and he submitted that till such time, if the Civil Revision Petition is not allowed and the delay of 202



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days in filing the petition to set aside the exparte order is not condoned, the petitioner will be put to much hardship. He would also submit that the petitioner has a good case on merits.

4. Heard the learned counsel for the petitioner. Despite service of notice, the there is no representation for the respondent.

5. The Executing Court, without assigning any reason, had dismissed the petition seeking to condone the delay of 202 days in filing the petition to set aside the exparte order dated 04.02.2020. This Court is satisfied with the reasons attributed for the delay and thereby the unreasoned order dated 11.04.2022 passed by the lower Court is liable to be set aside.

6. In view of the above, the Civil Revision Petition stands allowed and the order passed in REA.No.1/2020 dated 11.04.2022 stands set aside. No costs.

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vsi
Index:Yes/no

To
I Additional Subordinate Judge, Salem.

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vsi

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