



WEB COPY

A.No.380 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 03.04.2025	PRONOUNCED ON 23.04.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.380 of 2025
in
C.S.No.516 of 2018

P.Kumaran

...Applicant/ Defendants

vs.

B.Govindaraj

... Respondent/ Plaintiff

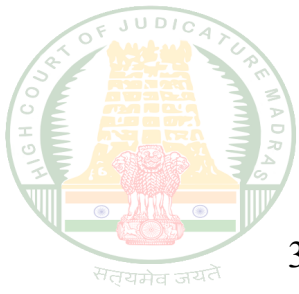
For Applicant : Mr.P.Sridharthan

For Respondent : Mr.C.Balaji

ORDER

This instant application has been filed to condone the delay of 1812 days in setting aside the *ex-parte* decree dated 11.11.2019 passed in the above suit in C.S.No.516 of 2018.

2) Heard Mr.P.Sidharthan, learned counsel appearing for the applicant and Mr.C.Balaji, learned counsel appearing for the respondent.



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3) Mr.P.Sidharthan, learned counsel for the applicant submits that the suit was filed by the respondent/plaintiff for recovery of money to a tune of Rs.3,29,82,500/- from the defendant. He further submit that an application was taken up by the respondent in the said suit in A.No.5918 of 2018 to furnish the security for the suit money, wherein the applicant filed a detailed counter. The said application was allowed on 18.09.2019 to furnish the security for the suit money. He submits that the respondent parallely instituted a false cheque bounce case under C.C.No.6080 of 2017 before the XIX Metropolitan Magistrate, Egmore based on the same set of facts as in the suit. He further submits that his counsel who represented him in the suit was also not very active in practice for some relevant period and the applicant was set *exparte* on 27.09.2019 for non-filing of written statement and the suit was decreed on 11.11.2019. He further contends that it is due to the ignorance of the applicant counsel in following up the above case, the applicant was set *exparte*. He further contends that the applicant has a substantial defense to prove the respondent has no case on his side and there is no liability for the applicant toward the suit money. He further submits that the applicant's mother who is aged about 73 years suffers from neuro disorder and the applicant is taking



care of her since all other siblings are settled in Canada. Further, he submits that during 2020- 2022 the whole country was affected by COVID-19

pandemic and hence the court proceedings are functioned with restrictions.

Further, the applicant was involved in fighting the cheque bounce case and the respondent never referred to the civil suit in the said proceeding. He further contend that the applicant came to know about the *ex parte* decree only when the respondent referred to decree in the year 2019 in the instant suit only in counter to the appeal against the conviction order in Sec 138 of Negotiable Instruments Act case. Thereafter, the applicant took time to trace the bundle and get change of vakalath from his erstwhile counsel and entrusted the same to the present counsel and filed written statement along with this petition. He further submits that in view of the above stated genuine reasons the applicant could not meet the counsel at the earliest and file his written statement. He further submits that the applicant filed this present application from the date of knowledge, but however due to abundant caution the applicant filed the written statement along with this condone delay petition. He further submits that due to the aforesaid genuine reasons, the delay was caused and it is neither wilful nor wanton. Hence, he prays to allow the application.



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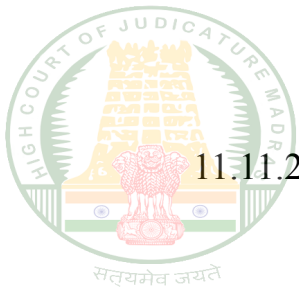
4) Countering the arguments of the applicant, Mr.C.Balaji, learned counsel for the respondent submits that the respondent filed the suit for recovery of money from the applicant and the same was *exparte* decreed on 11.11.2019. He further submits that the applicant was duly served in the said suit and he had entered appearance through a counsel and filed counter in an application to furnish security for the suit money. He further submits that though the applicant had been granted with sufficient time to file written statement, he had deliberately failed to file the same and was set *exparte* on 27.09.2019. He further contends that shifting the blame on previous counsel for his ignorance is totally unacceptable. He further submits that the applicant is a court bird and he is well aware of the court proceedings and he cannot take such a stand after filing counter in an application for furnishing security. Further, he not specified the reason as to why he failed to contact his counsel for more than 5 years and no proofs were submitted to substantiate his reasons except COVID pandemic. Further, the applicant cleverly disposed of all his immovable properties after the decree of the suit to deprive the respondent to realize the fruits of the decree which clearly shows that the applicant is aware of the *exparte* decree. He further contends that the applicant came up with this application only after the respondent initiated to file EP which clearly shows



the intention of the applicant is to delay or to protect the proceeding. He contends that the delay days were not properly explained and on this context he relied upon a judgment of the Hon'ble Apex Court in ***B.Madhuri Goud Vs B.Damodar Reddy*** reported in ***(2012) 12 SCC 693***. He further submits that the present application is only an after thought and to cause further delay and frustrate the respondent in filing this application. Hence, he prays to dismiss the application as devoid of merits.

5) Heard the counsels for either sides and perused the material available on record.

6) A suit for recovery of money had been filed by the respondent against the applicant. The respondent had also filed an application seeking the respondent to furnish security, wherein also the applicant had not filed counter and the same was ordered in favour of of the respondent on 05.07.2019 finally on 18.09.2019 the immoveable property stood attached for failure to furnish security. The applicant failed to file written statement and set *exparte* on 27.09.2019 and the suit was decreed *exparte* on 11.11.2019. Now the applicant is before this court after 5 years seeking to set aside the *exparte* decree dated



11.11.2019 along with an application to condone the delay of 1835 days.

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7) Further, the delay 1835 days in the condone delay application has not been properly explained. Though, the applicant pleads he has substantial proof to deny the claim of the respondent, it is for the applicant to explain each and every day of delay. In this context, it would be useful to refer to the judgment of Hon'ble Apex Court in ***H.Guruswamy and others Vs. A.Krishnaiah Since Deceased by Lrs*** reported in ***2025 SCC Online SC 54***, wherein it is stated that delay cannot be condoned based on merits of main matter, if there is no sufficient explanation for delay. Further, it is for the defendant to be more diligent to participate in the lis, when the defendant is aware of the pending litigation and the reasons contributed by this ignorance is unacceptable and in that context it would be useful to refer the judgment of Hon'ble Apex Court in ***Rajneesh Kumar and Another Vs Ved Prakash*** reported in ***2024 SCC Online SC 3380***, wherein it is stated that the litigant should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.

8) For the aforesaid finding and reasoning, this application stands



A.No.380 of.



dismissed. There shall be no order as to costs.

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23.04.2025

Index : Yes / No

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A.No.380 of.



K.KUMARESH BABU.J.,

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Pre-Delivery Order in
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