



CRP.(MD).No.549 of 2025

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CRP.PD.(MD).No.549 of 2025

against

I.A.No.1 of 2021

in

O.S.No.241 of 2015

and

CMP(MD).No.2960 of 2025

A.Selvaraj

.. Petitioner/Petitioner/Defendant

Vs.

Pappu Mariyan

...Respondent/Respondent/Plaintiff

Prayer: This civil revision petition has been filed under Section 115 of the Code of Civil Procedure, 1908 to set aside the fair and decretal order made in I.A.No.1/2021 in O.S.No.241 of 2015 dated 01.11.2023 on the file of the learned Sub Judge, Manaparai.

For Petitioner : Mr.K.Ramesh
For Respondent : Mr.T.Antony Arulraj



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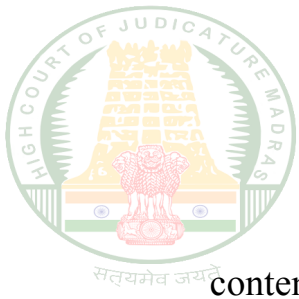
ORDER

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The defendant in O.S.No.241 of 2015 on the file of the sub-Court, Manaparai has filed the present revision petition, challenging the order of dismissal of application for condoning the delay of 1098 days in filing the application to set-aside *ex-parte* decree.

2. A perusal of the record reveals that the plaintiff has filed the said suit for recovery of money based on a pro-note. Along with the suit the plaintiff has filed I.A.No.163/2015 for attachment before judgment. Since, the defendant remained *ex-parte*, the order of attachment was passed on 11.09.2024 and it was made absolute on 29.04.2016. Thereafter an *ex-parte* decree has been passed on 30.08.2016. The defendant has filed I.A.No.01 of 2021 on 03.10.2019 seeking to condone the delay of 1098 days in filing the application to set aside the *ex-parte* decree.

3. According to the defendant, he was not served with the summons in the suit and he came to know about the pendency of the suit only when he received notice in the execution proceedings. This



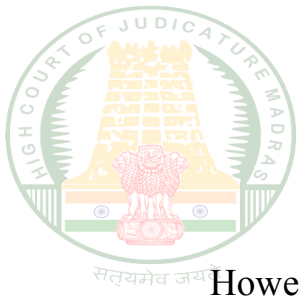
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contention of the defendant was dis-believed by the trial Court and the condone delay application has been dismissed. Challenging the same, the present civil revision petition is filed.

4. According to the learned counsel for the petitioner, the petitioner is working in the transport corporation and his wife was taking care of the suit. She was in Tirupur and there was nobody to receive the summons, therefore, the summons have not been properly served to the said address mentioned in the plaint. In such circumstances, the trial Court ought to have given one more opportunity to the defendant to contest the suit.

5. *Per-contra*, the learned counsel appearing for the respondent/plaintiff had contended that the defendant has filed the condone delay application with the same address that is mentioned in the plaint. Therefore, the contention of the defendant that the summons were sent to the wrong address is not correct. Further in the cross-examination, he has admitted that he came to know about the pendency of the suit through an advertisement made in “*Daily Thanthi*” in the year 2018.



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However, the present application to condone the delay has been filed only in October, 2019. Therefore, the defendant did not choose to explain the delay even after having knowledge about the pendency of the suit.

6. Heard both side and perused all the available materials on record.

7. The only reason assigned by the defendant for seeking condonation of delay of 1098 days is that he was not served with the summons. The trial Court has categorically found that there is no dispute with regard to the address of the defendant and since the defendant was not available on the said address on that day, the summons have been pasted on the door. The defendant has admitted during his cross-examination that he came to know about the suit through the advertisement in "*Daily Thanthi*" in the year 2018. However, the present application to condone the delay has been filed only on 10.03.2019. Therefore, it is clear that the plaintiff having knowledge about the pendency of the suit has not chosen to contest the case by engaging a counsel or appear before the Court.



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8. The reasons assigned for the delay has not been properly explained, the trial Court has rightly dismissed the application. This Court does not find any merit in this revision petition and is accordingly dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

06.03.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
nst
To
The
Sub Judge,
Manaparai.



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R.VIJAYAKUMAR,J.

nst

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