



.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-03-2026

CORAM

THE HON'BLE MRS.JUSTICE N. MALA

CRP No. 357 of 2024

and

CMP No. 1676 of 2024

B.Thirumarn
S/o.Balakrishnan,
No.14, Ekangipuram 1st Street,
Aynavaram, Chennai-600 023.

..Petitioner(s)

Vs

B.Senguttuvan
S/o.Balakrishnan,
No.949/C, TVS Avenue Main Road,
Anna Nagar West Ext, Chennai-600 101.

..Respondent(s)

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the *ex parte* decree in condone delay of 706 days in I.A No.1 of 2023 in O.S. No.5786 of 2018 dated 08.09.2023 passed by the XVI Additional City Civil Court, Chennai.

For Petitioner(s): Ms.S.Jayanthi
for Mr.N.Saravanan

For Respondent(s): Mr.R.Chandra Sudan

ORDER

This Civil Revision Petition has been filed challenging the order dated 08.09.2023 passed by the XVI Additional City Civil Judge, Chennai in I.A.No.1 of 2023 in O.S.No.5786 of 2018.



2. The petitioner is the defendant in the suit. The petitioner is the younger brother of the respondent and is engaged in painting contract business. The respondent filed a suit in O.S.No.5786 of 2018, on the premise that the petitioner borrowed a sum of Rs.10,00,000/- from him and executed a pro-note on 11.12.2015; petitioner had agreed to pay the same at the rate of 24% interest per annum. The aforesaid suit was decreed on 15.02.2019, directing the petitioner to pay a sum of Rs.16,93,041/- with interest at the rate of 12% per annum from the date of the plaint till the date of judgment and future interest at the rate of 6% per annum till the date of realisation. Subsequently, the respondent also filed E.P.No.3413 of 2019, before the XXVII Assistant City Civil Court, Allikulam. In the E.P, the petitioner appeared through his counsel on 03.12.2019 and sought time for filing counter. Thereafter, the petitioner filed an application in I.A.No.1 of 2023 for condoning the delay of 706 days in seeking to set aside the *ex parte* decree dated 15.02.2019. The petitioner in his affidavit averred that because of heavy Blood Pressure and his diabetic condition, he was not able to attend on 07.02.2019, the day on which he was set *ex parte*. The petitioner further stated that since he was taking treatment in the hospital, he instructed his counsel to conduct the case, but unfortunately, the counsel failed to appear before the Court. For the said reasons the petitioner prayed to condone the delay of 706 days, in seeking to set aside *ex parte* decree.



3. The respondent filed his counter in the aforesaid I.A, and submitted that the defendant had knowledge of the *ex parte* decree as early as on 03.12.2019, when he appeared in the E.P through his counsel. The respondent further stated that despite knowledge of the *ex parte* decree, the petitioner wantonly filed an application with the delay of 706 days on untenable and vague reasons. The respondent therefore prayed to dismiss the petition.

4. The lower Court vide impugned order dated 08.09.2023, dismissed the petition on the ground that the petitioner had knowledge of the *ex parte* decree through the summons issued in E.P.No.3413 of 2019. Even thereafter, the petitioner for the reasons best known to him, did not file the petition in time. The lower Court also found that absolutely no supporting documents were filed by the petitioner to establish that he was suffering from high Blood Pressure and diabetics and that he was taking treatment. The lower Court finding no bonafides in the petition, dismissed the petition.

5. The learned counsel for the petitioner submitted that the impugned order of the lower Court was against law and materially irregular. The learned counsel submitted that great prejudice, gross injustice and injury was caused to the petitioner by the impugned order. Hence, the learned counsel prayed that the Civil Revision Petition be allowed.



6. The learned counsel for the respondent on the other hand submitted that there are absolutely no merits in the Civil Revision Petition and that in the absence of any justifiable reasons and substantial cause shown by the petitioner for condoning the inordinate delay of 706 days, the trial Court was justified in rejecting the petition.

7. I heard both the learned counsels and perused the materials placed on record.

8. This Court has examined the reasons stated by the petitioner to condone the delay of 706 days, in filing the petition to set aside the *ex parte* decree. The reasons stated by the petitioner were that he was suffering from high Blood Pressure and diabetics and that he had instructed his counsel to conduct the case, but unfortunately the counsel failed to appear. Hence, the petitioner was set *ex parte* and subsequently, *ex parte* decree was passed.

9. From the affidavit of the petitioner, it is clear that the aforesaid reasons were stated only for explaining the absence of the petitioner on 07.02.2019, on which day the petitioner was set *ex parte* by the lower Court. Even for such plea, as rightly pointed out by the lower Court, there is absolutely no supporting document. It is further pertinent to note here that the petitioner received summons in the E.P.No.3413 of 2019, filed by the respondent for execution of



the *ex parte* decree dated 15.02.2019 and he appeared through his counsel on 03.12.2019. Despite getting knowledge of the *ex parte* decree in the E.P proceedings, the petitioner for the reasons best known to him, chose not to file the petition in time. There is absolutely no explanation by the petitioner for not filing the application within the time at least from the date of knowledge. Therefore this Court finds that the lower Court is justified in its finding that no substantial cause was shown by the petitioner for condoning the inordinate delay of 706 days.

10. The learned counsel for the petitioner submitted that a liberal approach and justice oriented approach ought to have been adopted by the lower Court.

11. This Court is of the view that in the absence of substantial cause being shown, the concepts of liberal approach or justice oriented approach should not be employed, to frustrate the substantial law of limitation. This Court finds that there is absolutely no bonafides in the petition, despite appearing in the execution petition as early as on 03.12.2019, through his counsel, the petitioner has failed to assign any justifiable reason for not filing the application within time from the date of knowledge of the *ex parte* decree.

12. It is trite that the parties cannot be allowed to fix their own period of



limitation for initiating the proceedings, for which the law has prescribed a specific period. The law of limitation cannot be circumvented to destroy substantive rights by employing dilatory tactics.

13. As held by the Hon'ble Supreme Court, consideration of the rules of limitation are not merely technical but are ones founded on principles of policy and equity. Since this Court has found that the petitioner has lost his right to have the matter considered on merits because of his in action for a long period, it should be presumed that the delay was deliberate and wanton.

14. Therefore, this Court finds no merit in the Civil Revision Petition. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently the connected miscellaneous petition is closed.

02-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

dna/dsn



To

1. The XVI Additional City Civil Court, Chennai.
2. The XXVI Assistant City Civil Court, Chennai.

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N.MALA J.

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