

Devi and 6 Others Vs. K. Jayaraman (Cavetor)

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Court : Chennai

Decided On : Nov-07-2000

Reported in : (2001)1MLJ231

Judge : Prabha Sridevan, J.

Acts : [Limitation Act, 1963](#) - Sections 5

Appeal No. : C.R.P. No. 2199 of 2000 and C.M.P. No. 12027 of 2000

Appellant : Devi and 6 Others

Respondent : K. Jayaraman (Cavetor)

Advocate for Def. : Mr. G. Veerpathiran, Adv.

Advocate for Pet/Ap. : Mr. M.K. Kabir, Adv.

Judgement :

ORDER

1. The defendant is the petitioner whose application is condone the delay of 316 days is filing the petition to set aside the ex parte decree was dismissed.
2. The respondents filed C.S.No.551 of 1995 before this Court. Subsequently, upon enhancement of pecuniary jurisdiction, it was transferred to the City Civil Court and numbered as O.S.No.9306 of 1995. The petitioner was not aware of the transfer and therefore did not appear in the City Civil Court. Further since the

petitioner's counsel also fall ill, they could ascertain the actual state of affairs. Only when E.P.No.1612 of 1999 was served on them, they came to know that the suit was decreed ex parte on 12.12.1998. the delay in filing the application had...only in the above circumstances and not on account of any negligence or indifference.

3. To the above averments made by the petitioners in their affidavit, the respondent filed his counter denying the according to him the petitioners counsel had also appeared in the City Civil Court taking adjournment and therefore, the case set up by the petitioner that they know about the pendency of the suit in the City Civil Court only after service of notice was baseless.

4. The learned Second Assistant Judge, City Civil Court dismissed the application on the ground that no oral or documentary evidence had been produced by the petitioners in support of their case.

5. Mr.M.K. Kabir, the learned counsel for the petitioner submitted that he had entered appearances for the respondent in this court. However, he had not appeared before the City Civil Court after the transfer and the conclusion drawn by the court below as though he had entered appearance and thereafter, wilfully allowed the matter to go ex parte was not correct. He relied on the decision reported in M/s Fast Cool Services by Partners 1. Radhamohan, 2. Shankar Vs . P. Shanthakumari, , Edwin Alex v. Syndicate Bank, Karingal Branch rep. by its Branch Manager, and Shiram Chits and Investment (P) Ltd., T. Nagar v. M. Krishnan and others, to support his case that courts liberally constructs the words ' Sufficient Cause' while exercising their jurisdiction in applications filed under Section 5 of the Limitation Act 1963.

6. Mr. Veerpathiran, learned counsel for the respondent on the other had vehemently argued that there is no justification for interfering with the order of the court below and that the only intention of the petitioners is to harass the respondent by employing dilatory tactics. He also produced the certified copy of the suit register.

7. On a consideration of the arguments advance on both sides and on a perusal of the records sent by the lower court as well as the extract of the suit register

furnished by the learned counsel for the respondent, I am not able to come to the conclusion, that the learned counsel for the petitioner here who had entered appearance in this court when the suit was originally filed, had actually takes notice and appeared on several hearings before the City Civil Court. I am inclined to accept the explanation given by Mr. M.K. Kabir that the courts below had taken note of the appearance entered by him in this Court and had proceeds on that basis. In the decision reported in Edwin Alex v. Syndicate Bank, Karingal Branch rep. by its Branch Manager, , the learned Judge while condoning the delay held as follows:

'Moreover, even in such event, when the delay is quite long, the petitioner cannot be punished with denial of further opportunity to prosecute the maincase in which event, the petitioner's entire right regarding the suit properties would become jeopardised. Hence, proper course to adopt under such circumstances is not to punish the petitioner with the dismissal and denial of opportunity to carry on with the enquiry, or trial of the main proceedings but to condone to burden him with costs.'

8. I am inclined to follow the approach taken by the learned Judge in the above case. The order of the Court below is set aside on condition the petitioner pays the respondent a sum of Rs.2000 within four weeks from the date of receipts of copy of this order failing which the Civil revision petition shall stand dismissed. Consequently, the connected C.M.P.No. 12027 of 2000 is closed.

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