

Sakthivel. Vs. MekaA.

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Court : Chennai

Decided On : Apr-04-2012

Judge : G.Rajasuriya, J.

Acts : [Limitation Act, 1963](#) - Section 5; [Code Of Civil Procedure \(CPC\), 1908](#) - Order 9 Rule 13; Constitution Of India - Article 227

Appeal No. : C.R.P.(NPD) No.4012 of 2010 and M.P.No.1 of 2010

Appellant : Sakthivel.

Respondent : MekaA.

Advocate for Def. : Mr.D.Krishnakumar, Adv.

Advocate for Pet/Ap. : Mr.Ma.P.Thangavel, Adv.

Judgement :

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned District Munsif, Dharmapuram, Erode in I.A.No.1474 of 2009 in O.S.No.506 of 2007 dated 22.07.2010.

G.RAJASURIYA, J.

ORDER

1. Succinctly and precisely, the germane facts which are necessary for the disposal of this revision petition would run thus:-

The revision petitioner/plaintiff filed the suit for recovery of money based on the pro-note executed by the respondent/defendant in favour of the revision petitioner/plaintiff. The suit was decreed ex-parte. However, the respondent/defendant filed an application under Section 5 of the Limitation Act to get condoned the delay of 102 days in filing the application to get set aside the ex-parte order under Order 9 Rule 13 of Civil Procedure Code.

2. After hearing both sides, the trial Court condoned the delay on cost of Rs.500/- payable by the respondent/defendant to the revision petitioner. Aggrieved by and dissatisfied with the order of condoning the delay, this revision petition has been focussed.

3. The learned counsel for the revision petitioner submitted that this is a peculiar case wherein the respondent/defendant is a court staff, working in the same Court premises where the matter was taken up and the delay was condoned and in such case, absolutely there could be no reason much less valid reason for condoning such enormous delay of 102 days. The reasons cited by her in the affidavit was that her husband was suffering from stomach ache.

4. As such the learned counsel for the revision petitioner would pray for setting aside the order of the lower Court in condoning the delay

5. Whereas the learned counsel for the respondent would put-forth his arguments to the effect that the lower court condoned the delay because the defendant's husband was suffering from ill-health and hence, she could not prosecute the litigation and there is no perversity or illegality in condoning the delay in favour of the defendant.

6. The revision petitioner being the plaintiff, no doubt would be interested in recovering the money based on the ex-parte decree. However, the lower Court in this case, thought fit to condone the delay of 102 days subject to payment of costs. At this juncture, I would like to observe that there is considerable force in

the submissions made by the learned counsel for the revision petitioner/plaintiff that the defendant was deliberate in not filing the application under Order 9 Rule 13 within 30 days because she is a court staff. In *Stricto Sensu*, there might be no valid reason for the defendant in getting such delay condoned.

7. It appears that the trial court taking into consideration that the suit is one for recovery of money and opportunity had to be given for the defendant to defend the case, the delay was condoned; however subject to payment of a meagre cost of Rs.500/-, I am of the considered view that this Court in revision may not be justified in interfering with the discretion exercised by the trial Court. However, the cost awarded was very meagre comparing the delay caused by the respondent/defendant. In money suits, the defendants would be bent upon dragging the proceedings, hence deterrent costs should be imposed, and then only such conduct could be checked. In the interest of *audi alteram partem*, opportunity should be given to the defendant to contest the matter. In the mean time, the Court should not lose sight of the fact that

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the inconvenience caused to the plaintiff in this regard by the defendant, since she happened to be a court staff and she should have been diligent enough in filing the application in time, Rs.500/- as ordered by the Court below is enhanced to Rs.1000/- payable by the respondent/defendant to the revision petitioner/plaintiff on or before 25.04.2012.

8. Subject to the aforesaid modification in the order of the lower Court, the revision petition is disposed off. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

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