

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

PRESENT: TMT. FANNY RAJAN, B.A., B.L.(Hons.),
DISTRICT MUNSIF, AMBATTUR.

Tuesday, the 07th day of February 2023.

INTERLOCUTORY APPLICATION NO.1 OF 2022

IN

ORIGINAL SUIT NO.539 OF 2015

CNR.No.TNTR22 – 000514 - 2015

Mr.K.Ethiraj

..... Petitioner/Defendant

Versus

K.Raman

.....Respondent/Plaintiff

This petition having coming on 28.10.2022 before me for final hearing in the presence of Shri.G.Suresh, learned counsel for the Petitioner/Defendant, Shri.K.Bharathi, L.Mayavan, G.Pugazvendan and M.Shankar, learned counsels for the Respondent/plaintiff, upon hearing the arguments made by the learned counsel for the petitioner and the respondent and perusal of the records, having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition is filed under Order IX Rule 7 of CPC to set aside the exparte order in O.S.No.539 of 2015 dated 26.03.2018.

CONCISE STATEMENT OF PETITION FILED BY THE PETITIONER:

2. The Petitioner has averred that the suit is filed for permanent injunction and his name was wrongly mentioned. He is a senior citizen and his advocate filed vakalat. However written statement was not filed as he was affected with jaundice in 2018 and

under treatment for severe knee pain. Hence unable to move. Later affected with Covid and difficulty in travelling, hence unable to contact his counsel. On 15.11.2021, he met his advocate and became aware that he was set exparte on 26.03.2018 for non compliance of cost ordered on 23.02.2018 and non filing of written statement. The same is neither willful nor wanton. If the Ex-parte order is not set aside, the petitioner will be put to irreparable loss and hardship. On the other hand no prejudice will be caused to the respondent. Hence, this petition.

CONCISE STATEMENT OF THE COUNTER FILED RESPONDENT:

3. The Respondents have denied the allegation and stated that the Petitioner was set exparte on 26.03.2018 and come up with this petition with 1306 days delay. There is no medical records filed regarding the alleged jaundice, knee pain and corona. The reason of contacting counsel after 3 ½ years despite availability of cell phone is false. The Petition is willfull and in fact the Petitioner filed this petition as the Respondent lodged a complaint with the police and district registrar regarding cancellation of sale deed and illegal construction. Further he relied on judgments in *Majji Sanemma @ Sanyasira Vs. Reddy Sridevi and others, Secretary of Government of Tamilnadu Vs. R.Karunanidhi, M/s.Ruskin Sea Food Ltd. Vs. M/s.Evergreen Sea Food Pvt. Ltd.* cases to substantiate the case. Hence the Petition has to be dismissed with costs.

POINTS FOR DETERMINATION:

4. Whether this petition under Order 9 Rule 7 of CPC to set aside the exparte order dated 26.03.2018 has to be allowed or not?

Discussion and Findings:

5. This Court heard the submissions of both the learned counsels and perused the materials on record. This Court finds that both the parties have not let in any oral or documentary evidence to substantiate their claims.

6. This court perused the judgments relied on by the learned counsel for the Respondent in *Majji Sanemma @ Sanyasira Vs. Reddy Sridevi and others, Secretary of Government of Tamilnadu Vs. R.Karunanidhi, M/s.Ruskin Sea Food Ltd. Vs. M/s.Evergreen Sea Food Pvt. Ltd.* All these case relate to condonation of delay in appeal and hence not similar to the facts of this case.

7. This Court finds it necessary to take judicial note of the ratio decidendi of the Hon'ble Supreme Court in several cases that ***"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor."***

8. In view of the above said propositions, this Court considers whether a liberal approach can be adopted in the case of the Petitioner. On thorough perusal of the records, this Court finds that the exparte order was passed on 26.03.2018. Thereafter, the instant petition to set aside exparte order was filed on 30.11.2021.

9. This Court finds that the reason quoted by the Petitioner for the delay and non appearance is that the petitioner was affected with jaundice, under treatment for

knee pain and later affected with covid. Hence written statement could not be filed. This Court finds that irrespective of the averment, no document has been produced or marked in this Petition to substantiate the alleged ill health and treatment. However, this Court is of the considered view that the non filing of the records is alone not sufficient to hold that the reasons quoted by the Petitioner as unacceptable.

10. Further, this Court is of the considered view that the reasons cited for non appearance is very vague and requires more specific details regarding the alleged ill health and the day to day delay has not been explained. It is a well settled principle of Law by the Hon'ble Apex Court and Hon'ble Madras High Court in a plethora of Judgments that the Courts shall always endeavour to adjudicate and decide the suits on merits and provide sufficient opportunity to the litigants for the same. This court also takes judicial note of the covid situation. Whiles, upon perusal of the records, this courts finds that there are no materials on record to substantiate that the absence and delay or lack of diligent follow ups on the part of the Petitioner was deliberate and covered with malafide.

11. Though a contention has been raised by the learned counsel for the Respondent, that the Petitioners had deliberately delayed the proceedings, no oral or material evidence has been let in or pointed to substantiate the said claim. Further, there is no material on record to show that there was any malafide or dilatory tactics on the part of the Petitioners in filing this Petition. Hence, this Courts considers that this Court shall adopt a liberal approach and finds that the reason quoted by the Petitioners are attributable as sufficient cause to set aside the exparte order dated

26.03.2018. Further, another opportunity shall be provided to the Petitioner to contest the case on merits in the interest of justice.

12. Though this Court finds that the Petition can be allowed for the above stated reasons, this Court takes note of the fact that the suit was set exparte on 26.03.2018. This Court takes judicial note of the law laid down by the Hon'ble Supreme Court that ***"It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."*** As such, the instant petition having been filed at this stage has caused inconvenience to the Respondent and the suit is of the year 2015. Considering the said fact that this Court finds it reasonable to order a sum of Rs.3000/- to be paid by the Petitioner to the Respondent for the inconvenience caused.

RESULT :-

13. In the result, this Petition is allowed and the exparte order dated 26.03.2018 in O.S.No.539/2015 is set aside, on the condition that the Petitioner shall pay a sum of Rs.3000/- (Rupees Three Thousand only) to the Respondent on or before 14.02.2023. Call on 14.02.2023.

Dictated to the steno-typist, transcribed by her in the desktop, corrected and pronounced by me in the open Court on this the 07th day of February 2023.

DISTRICT MUNSIF,
AMBATTUR.

PETITIONER AND RESPONDENTS SIDE WITNESSES AND EXHIBITS: NIL.

DISTRICT MUNSIF,
AMBATTUR.