

In the Court of the Additional District Munsif, Padmanabhapuram.

Present: **Selvi.V.Viswatha, B.A.,LL.B(Hons).,LL.M.,**
Additional District Munsif.

Tuesday the 02nd day of March 2021

I.A No.7 of 2020 in O.S No.112 of 2018

R.Bhuvanesh Raja.

.. Petitioner/ Defendant...

/ Vs. /

R.Edwin

..Respondent/Plaintiff.

This petition is presented before me for final hearing, in presence of Thiru.D.Dhana Chandra Prakasah, learned counsel for the Petitioner and Thiru.S.K.Ajithkumar, learned counsel for the Respondent. Upon hearing the counsels on both side and on perusal of the records stood over for consideration till this day, this court passed the following

ORDER

This petition is filed under Order IX Rule 7 and Section 151 of Civil Procedure Code to set aside the exparte order passed against the petitioner on 23.07.2020.

2. Brief of petition facts is as follows:-

The Petitioner states that he is the defendant in the above suit. It is stated that on 23.07.2020 he was called absent and set exparte as there was no representation on behalf of him. The petitioner states that the court was not functioning during the above said period and so he was not able to meet his Advocate to make representation. But the petitioner states that when the suit was posted for exparte evidence only he came to know about the exparte decree passed against him. It is

stated that the above lapse is neither willful nor wanton. Hence this petition is filed to set aside the exparte order passed against the petitioner on 23.07.2020.

3. Counter filed by the Respondent in brief:-

The respondent has filed counter stating that the petitioner is residing in close proximity to the court house i.e., 5 building away from the court premises. The respondent states that he has direct knowledge of the posting of the case and as well as interlocutory application. But he has deliberately abstained from attending the court, with a view to protract the disposal of the suit. The respondent states that the prayer in the petition does not disclose whether the order sought to be set aside relates to the suit or interlocutory application. Because the same prayer is copied in all the three petitions. The respondent states that the petitions are filed with total non application of mind, because there is no I.A having the number 1 of 20, 3 of 20 pertaining to the above suit in O.S. No.112/18. It is stated the petition is highly belated and barred by limitation. It is stated that the exparte order in the suit and interlocutory application was passed on 23.07.2020, whereas the petitions are filed on 18.11.2020. It is stated that there is no petition to condone delay. It is also stated that the separate petition is needed to be filed to receive the written statement filed beyond the prescribed year. Thus the respondent stated the petition is liable to be dismissed.

4. Heard the counsel on both sides and perused the records stood over for consideration.

5. Now the point for consideration is whether the petition is liable to be allowed or not?

6. The petitioner is the defendant in the suit. The petitioner states that on 23.07.2020 since there was no representation on behalf of the petitioner/defendant to file written statement he was set exparte. The petitioner states that the court was not functioning due to covid 19 and it is stated that he was not able to make arrangements to represent on behalf of the petitioner/defendant. The respondent has resisted the petitioner's plea and has stated that the petitioner is residing in close proximity to the court building and it is stated that with a view to protract the disposal of the suit and interlocutory application he has abstained from attending the court.

7. The respondent states that this petition is belated and barred by limitation and it is filed without petition to condone delay.

8. On perusal of the records it is found that the suit has been adjourned to 10.09.2018 for filing of written statement. However even after the lapse of 641 days the petitioner has not chosen to file the written statement. Further as per High Court ROC.No.1363/2020/RG/Sub Courts, dated 03.06.2020 physical functioning of the court effectively started w.e.f. 08.06.2020. Further drop box facilities was also available to file the necessary petitions. The court was functioning and the petitioner had facility to file through the drop box facility. Further labeling the out break of corana virus for non appearance is not acceptable in case of the petitioner as even before the out break of novel corana virus the petitioner was defaulting from appearance. Further as per section 4 of Limitation Act 1963 the lock down/suspension of court work is treated as closure with effect from 23.03.2020 to 04.04.2020 only.

9. However, since the petitioner/defendant has appeared now and shown willingness to conduct the case, by considering the principles of natural justice this court decides to allow this petition by imposing condition.

10. In the result, the petitioner is directed to pay Rs.3000/- to the District Legal Service Authority, Padmanabhapuram on or before 25.03.2021 and there shall be no delay in filing of the written statement. Failing which the petition shall be dismissed. Call on 25.03.2021.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 02nd day of March 2021.

Additional District Munsif,
Padmanabhapuram.

ADMC Padmanabhapuram.
IA.No.7/20 in OS.No.112/2018.
Draft/Fair Order:
Dt: 02.03.2021.