

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

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

Friday, the 01st day of July 2022.

INTERLOCUTORY APPLICATION NO.1 OF 2021
IN
ORIGINAL SUIT NO.213 OF 2016

R.Saroja Petitioner/Defendant

Versus

R.Kalpana Respondent/Plaintiff

This petition having coming on 28.06.2022 before me for final hearing in the presence of Shri.N.Biswanath and P.M.Ashok Kumar, learned counsels for the Petitioner/defendant, Shri.K.Murali Babu and T.K.Vijayakanthan, 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 9 Rule 7 of CPC to set aside the exparte order passed against the petitioner on 21.08.2017 in the above suit.

2. CONCISE STATEMENT OF PETITION FILED BY THE PETITIONER:

2.1. The Petitioner has averred that the respondent has filed the suit seeking for permanent injunction and the petitioner had filed the written statement. The same was returned for some defects and later got mixed up in Advocate's office. Hence, the

same could not be represented in time. For non filing of the written statement, this petitioner was set exparte on 21.08.2017 and the written statement is represented herewith and the same may kindly be accepted. The petitioner has got a good case on merits and if the exparte order passed against petitioner is not set aside he would be put to great loss and hardship. Hence, the petitioner have come up with this Petition.

3. CONCISE STATEMENT OF THE COUNTER FILED BY THE RESPONDENT:

The Respondent/plaintiff had filed the suit in 2016 and the petitioner/defendant had delayed more than five years in getting the petition numbered. The Respondent/plaintiff further states that the reasons stated by the petitioner is not acceptable and is devoid of merits. The above suit is pending for more than seven years and the lethargic activity of the petitioner shows the non interest by the petitioner. Hence this Petition has to be dismissed with exemplary cost.

POINTS FOR DETERMINATION:

4. Whether this petition under Order 9 Rule 7 of CPC to set aside the exparte decree dated 21.08.2017 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 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.”***

7. In view of the above said propositions, this Court finds that 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 21.08.2017. Thereafter, the instant petition to set aside exparte order filed alongwith the written statement on 01.11.2021.

8. This Court finds that the reason quoted by the Petitioner for delay and non appearance is that the written statement which was returned got misplaced in the counsel's office and hence delay to trace and represent. 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 misplacement and the day to day delay has not be explained.

9. It is a well settled principle of Law by the Hon'ble Apex Court and Hon'ble Madras High Court in a pleathora 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. Whiles, upon perusal of the records, this court 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.

10. Though the reason stated is vague without any proper details, upon perusal of the records, this court finds that there are no materials on record to substantiate that the absence and delay on the part of the Petitioner was deliberate and covered with malafide. Though a contention has been raised by the learned counsel for the Respondents, that the Petitioner 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 conclusively show that there was any malafide or dilatory tactics on the part of the Petitioner in filing this Petition. This court also finds that the written statement is filed along with this Petition to show bonafides.

11. Hence, this Court considers that this Court shall adopt a liberal approach and finds that the reason quoted by the Petitioner are attributable as sufficient cause to set aside the ex parte order dated 21.08.2017. 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 ex parte on 21.08.2017 for non filing of written statement. 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. 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 21.08.2017 in O.S.No.213/2016 is condoned, on the condition that the Petitioner shall pay a sum of Rs.3000/- (Rupees Three Thousand only) to the Respondent on or before 15.07.2022. Call on 15.07.2022.

Dictated to the steno-typist, transcribed by her in the desktop, corrected and pronounced by me in the open Court on this the 01st day of July 2022.

DISTRICT MUNSIF,
AMBATTUR.

PETITIONER AND RESPONDENT SIDE WITNESSES AND EXHIBITS: NIL.

DISTRICT MUNSIF,
AMBATTUR.