

(2006) 04 MAD CK 0040

In the Madras High Court

Case No : C.R.P (PD) No's. 368 and 369 of 2005

R. Kalimuthu

APPELLANT

Vs

The Management, Marlboro Engineering Works

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Citation : (2006) 2 CTC 822 : (2006) 3 MLJ 27

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; John Z., for T.S. Gopalan, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The respondent is a small scale industry engaged in the manufacture and marketing of pumpsets. It has a branch

at Indore. The petitioner was appointed as a Branch Manager at Indore Branch of the respondent's concern. The petitioner was the sole incharge

of the Branch and he was looking after the day to day administration. The duties of the petitioner were assigning work to the sales and

administrative staffs employed under him, supervising their work and sanctioning leave etc. The petitioner was incharge of the Branch cash

transactions and he also used to prepare periodical statements, debtors list and send the same to the respondent from time to time and also do all

incidental administrative work. He was holding a responsible post as a Branch Manager, using the powers conferred on him. As there was some

complaint against the petitioner , the respondent required him to come to Coimbatore for certain clarifications during May 2000. Because of some

misunderstanding, the petitioner left the service. Later, the petitioner filed the said claim petition No. 470 of 2000 before the Labour Court, Coimbatore claiming a sum of Rs. 1,14,525/- from the respondent. The respondent filed a counter statement and opposed the claim of the petitioner. The trial was commenced and the petitioner was put in the witness box. On 25.11.2002, the matter was posted for examining the respondent. The respondent did not appear, but his counsel appeared before the Court and reported no instruction. Specifically the case was posted on 25.11.2002 for cross examining the respondent. As the respondent was absent, the Court was of the view that he was not interested in defending the claim petition. Hence the matter was set exparte, and allowed the claim petition filed by the petitioner. The said fact came to the knowledge of the respondent only during February 2004, when the recovery proceedings were initiated against the respondent. Hence, the respondent filed I.A. No. 240 of 2004 to condone the delay of 444 days in filing the petition for setting aside the exparte order. The petitioner filed its counter affidavit and opposed the said condonation petition. By order dated 11.10.2004, the Presiding Officer of the Labour Court, Coimbatore allowed the application. Later an application to set aside the Exparte order was filed in I.A. No. 844/2004. The petitioner also filed a counter affidavit opposing the said application. The lower Court allowed the said applications in I.A. No. 240 of 2004 and I.A. No. 844 of 2004 and also directed the respondent for payment of an amount of Rs. 1,000/- to the petitioner. Later, the main case in C.P. No. 470 of 2000 was restored to the file of the Labour Court, Coimbatore. The petitioner filed the present petition challenging the order of the Presiding Officer, Labour Court, Coimbatore dated 11.10.2004 in I.A. No. 240 of 2004 and dated 27.10.2004 in I.A. No. 844 of 2004.

2. The learned counsel for the petitioner contended that the Presiding Officer had completely erred in allowing the application filed by the respondent for condoning the delay of 444 days in filing the application, and set aside the order. He also further submitted that the lower Court had over looked the material fact that whatever deposed by the respondent as P.W.1, had not at all been set out in the affidavit filed in support of the petition for the condonation of the delay as well as for setting aside the exparte order. He also brought the notice of this Court that what was said

in the affidavit filed in support of both the application was that respondent was represented by one Dhamodarasamy and that his consultant was following the case, and that the respondent was solely looking after the total business affairs and that the said Dhamodarasamy failed to follow up the case since October 2002 and that he was of the opinion that the due intimation would be given by the Advocate for appearance. It was also stated that whatever has been said by the respondent ran contrary to the affidavit, obviously by taking advantage of the death of the Advocate and to draw sympathy, such a new case had been set up at the time of leading the evidence, contrary to the allegations made by him in his affidavit and also he emphasised that the lower Tribunal ought not to have taken into account the evidence of the respondent as P.W.1 in as much as such an evidence was not based on the allegations made in the affidavit and accordingly the lower Tribunal ought to have rejected the entire contentions newly invented and improvised at the time of giving the evidence , by taking advantage of the death of the Advocate. He further stated that the lower Court ought to have noticed that the allegations as well as evidences let in by the respondent are totally malafide and not of good faith and as such on the discrepancies in the affidavit as well as in the evidence, and accordingly, should have dismissed the petition.

3. The learned counsel for the respondent submitted that the lower Court considered all the relevant materials and taken note of the counsel's prolonged illness and later, the counsel representing the respondent, died. The said two facts were duly taken into consideration and then only the lower Court condoned the delay and set aside the exparte order, and the order of the lower Court is in accordance with law.

4. I heard both the counsel. I have seen the affidavits filed by the respondent in both the I.As. The affidavit filed before the Labour Court in I.A.

No. 240 of 2004 is as under:

I, S.Krishnaswamy, S/o Sengaliappa Gounder, aged 43 years, residing at 69, Poongothai Nagar, Aerodrome Post, Coimbatore-641 014, do

hereby solemnly affirm and state as follows:

1. That I am the Proprietor of the petitioner/respondent and I am well aware of the facts and circumstances of the case.

2. The said C.P. was entrusted with an advocate to appear and prosecute our

case. One Mr. Damodharaswamy, our consultant was following the case. I as proprietor of the petitioner/respondent, was solely looking after the total business affairs. The said Dhamodaraswamy failed to follow up the case since October 2002. I was of the opinion that due intimation would be given by the advocate for my appearance. I was of the opinion that the case is pending as the advocate did not communicate. I was also very busy with the business. I came to know from a communication received from Government of Tamilnadu, on 24-02-2004, that the above C.P. has been disposed. Immediately I contacted my advocate and came to know that my counsel has reported no instructions, and that respondent has been set exparte and exparte order dated 25-11-2002 has been passed.

3. I state that I approached the present counsel and sought them to take steps to set aside the exparte order. Hence there is a delay of 444 days in filing the application to set aside the exparte order dated 25-11-2002. The non prosecution of the case leading to exparte order is neither wilful nor wanton and highly inadvertent. We are having a fit and valid case, unless and until the delay in filing the petition to set aside the exparte order is condoned, we would be put to irreparable losses.

3. Hence it is humbly prayed that this Honourable Court may be pleased to order condoning the delay of 444 days in filing the application to set aside the exparte order dated 25-11-2004, and render justice.

5. The affidavit filed before the Labour Court in I.A. No. 844 of 2004 is as under:

I, S. Krishnaswamy, S/o Sengaliappa Gounder, aged 43 years, residing at 69, Poongothai Nagar, Aerodrome Post, Coimbatore-641 014, do

hereby solemnly affirm and state as follows:

1. That I am the Proprietor of the petitioner/respondent and I am well aware of the facts and circumstances of the case.

2. The said C.P. was entrusted with an advocate to appear and prosecute our case. One Mr. Damodharaswamy, our consultant was following the

case. I as proprietor of the petitioner/respondent, was solely looking after the total business affairs. The said Dhamodaraswamy failed to follow up

the case since October 2002. I was of the opinion that due intimation would be given by the advocate for my appearance. I was of the opinion that

the case is pending as the advocate did not communicate. I was also very busy with the business. I came to know from a communication received from Government of Tamilnadu, on 24-02-2004, that the above C.P. has been disposed. Immediately I contacted my advocate and came to know that my counsel has reported no instructions, and that respondent has been set exparte and exparte order dated 25-11-2002 has been passed.

3. I state that I approached the present counsel and sought them to take steps to set aside the exparte order. Hence there is a delay, and a separate application has been filed before this Honourable Court for condoning the delay in filing the connected petition. The non prosecution of the case leading to exparte order is neither wilful nor wanton and highly inadvertent. We are having a fit and valid case, unless and until the exparte order is set aside we would be put to irreparable losses.

3. Hence it is humbly prayed that this Honourable Court may be pleased to order setting aside the exparte order dated 25-11-2002, and render justice.

6. The petitioner also filed a counter statement before the Labour Court and opposed the petitions and hence the Court should not condone the delay on the ground that the reasons had not been explained properly and also delay of each day not supported with any proper reason or with

any documentary evidence. The lower Court had taken note of the fact that the respondent company had engaged one Mr. C.N.Ramachandran,

Senior Advocate to represent the case before the lower Court. He was bedridden and was treated in Appollo Hospital due to prolonged illness.

The office of the said Advocate, Mr. Ramachandran had not intimated to the respondent about the progress of the case. Later, the said Mr.

Ramachandran died. When the respondent received a communication from the Government of Tamil Nadu on 24.02.2004 that the above claim

petition had been disposed of, immediately the respondent contacted the Advocate's Office and thereafter he was informed that the Advocate was

bedridden for a long time and also taken medical treatment at Appollo Hospital and later, the Advocate died. Due to these reasons, the Advocate

could not contact the respondent. The fact that the respondent advocate Mr. C.N.Ramachandran was engaged and represented the case earlier

was not at all disputed by the petitioner. There may be some contradiction between the reasons stated in the affidavit filed by the respondent and the evidence put forward at the time of leading the evidence, and on that said ground alone, the petition could not be dismissed. Letting in evidence brought out the valid reasons and hence the Court below rightly relied on the same for allowing the petition for condonation of the delay and setting aside the exparte order. When the respondent proved that he had sufficient cause for non-appearance, the Court is competent to set aside the order and restore the claim petition.

7. The lower Court accepted the explanation offered by the respondent and condoned the delay and consequently set aside the order passed earlier. Also it was brought to the notice after setting aside the exparte order, the claim petition was restored by the Labour Court and after restoration, the petitioner himself did not appear and the claim petition was dismissed for default. Later the petitioner filed condonation petition and the matter was restored. Now, the petitioner cannot turn around and contend that the respondent's condonation petition should be dismissed.

8. No one gets benefited by filing belated appeal or application. Because of the non-intimation by the Advocate's office about the progress of the case, the respondent could not properly instruct the counsel to make proper representation. Instead of taking a technical approach or get caught in the cobweb of technicalities, the Court takes a pragmatic approach in deciding the case on merits, which will render justice between the parties. In this case, the lower Court had correctly decided after considering the reasons stated by the respondent company for condoning the delay as well as setting aside the exparte order. The counsel for the petitioner had relied on number of judgments to support his argument. They are not relevant to the facts of this case as no general guidelines could be formulated for exercising the discretion. The condoning of delays is the discretion of the Court on appreciation of the evidences or materials available on the record. In this case, the lower Court exercised the discretion judicially and hence it is a reasonable one.

9. In view of the foregoing reasons, I am of the view that there is no error or infirmity in the order of the lower Court and the same does not require interference. Hence, the C.R.Ps. are dismissed. No costs. Consequently the

connected C.M.P. No. 3467 of 2005 is also dismissed.