

**(1990) 04 MAD CK 0061**  
**In the Madras High Court**  
**Case No : C.R.P. No. 300 of 1990**

Tiruchi Paper Bags Industry

APPELLANT

Vs

M. Aarbshah

RESPONDENT

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**Date of Decision :** 04-04-1990

**Acts Referred:**

**Citation :** (1990) 04 MAD CK 0061

**Hon'ble Judges :** Abdul Hadi, J

**Bench :** Single Bench

**Advocate :** S. Raja Kalifulla, for the Appellant; V. Nicholas, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Abdul Hadi, J.—This civil revision petition is against the dismissal order dated 29-9-1989 in I.A. 129 of 1989 filed by the petitioner herein for condoning the delay of 91 days in representation of the papers relating to the I.A. to condone the delay in filing the petition to set aside the ex parte decree against the petitioner herein for a sum of about Rs. 12,000. It was represented that the ex parte decree was passed as early as 23-4-1986 and the delay in filing the petition to set aside the ex parte decree was as much as 206 days and that there was the other aforesaid delay of 91 days in re-presentation also. No doubt, in dismissing I.A. 129 of 1989, the court below has simply stated that there was no sufficient cause for excusing the said delay. On that ground, the learned counsel for the petitioner attacked the said dismissal order. But the affidavit of the clerk of the petitioner's counsel in support of the said I.A. 129 of 1989 only stated that the papers were kept by him in the advocate's table, and. that since they were kept along with other bundles they could not be filed in court in time and that they were found out only subsequently. Thus, even in the affidavit, no particulars were given at all specifically for excusing the relevant 91 days. For example, when actually the papers were kept in the advocate's table and when actually they were found out subsequently, were not stated at all in the affidavit. The said affidavit itself is vague and is nor giving the required particulars with

reference to the relevant dates. Therefore, I am not inclined to interfere in revision, with the order passed by the court below. That apart, I am not so inclined, also because of the fact that the ex parte decree was passed long back and the fact that there was a delay of 206 days in filing the petition to set aside the ex parte decree. The learned counsel for the petitioner cited before me the decision in Meghraj Vs. Jesraj Kasturjee and Another, But, that decision only lays down that if under explainable circumstances an appeal or an application is filed but without a formal or a written application for excusing the delay in presentation of the same, then the Court should afford a reasonable opportunity to the party to mend matters to avoid miscarriage of justice. So, it is clear that the said decision has no application to the facts of the present case. Further, in the above said decision, there was a delay of only one day in filing the petition to set aside the ex parte decree; and without a petition to condone the delay, the petition to set aside the ex parte decree was filed. Only in that context, this Court made the above said observation and remitted the matter back to the Court below for giving an opportunity to the petitioner therein to file a petition and affidavit to explain the said one day's delay. The said decision has, therefore, no application to the facts of the present case.

2. This civil revision petition is, therefore, dismissed. No costs.