

CIVIL REVISION APPLICATION NO. 129 OF 2001.

Shri Clitas Gonsalves,
'Velli Nila Stores',
Marthadanthurai,
P.O. Kanyakumari.

... Applicant.

Versus

1. Shri Pankraj Gonsalves,
H.No. 34/4, Narrthadanthurai,
Kollangode, P.O. Kanyakumari.
2. Shri V. Appu Nair,
H.No. 60, New Vaddem,
Vasco da Gama.
3. State Bank of India,
through its Branch Office,
F.L. Gomes Road,
Vasco da Gama.
4. Adv. Shri T.T. Shreedharan,
F. 5, 4th Floor,
Apna Bazar,
Vasco da Gama.

Mr. S.S. Kantak with Mr. Gurudatta Saokar, advocates
for the Applicant.

Mr. G. Vijaychandran, Advocate for the Respondent No.
1.

Coram: P.V. HARDAS, J.

Date: 28th March 2002.

ORAL JUDGMENT.

By consent, the Civil Revision Application
is taken for final hearing.

2. This Civil Revision Application has been
filed by the original defendant no. 1 against the
Order passed by the Additional Civil Judge, Senior
Division, Vasco da Gama, in Civil Miscellaneous
Application No. 167/2000/B in Special Civil Suit No.

18/1996/B, dismissing the application of the present applicant for condonation of delay in filing application for setting aside exparte decree.

3. The aforesaid application came to be filed by the present applicant accompanying an application for setting aside exparte decree dated 26th February 1999. It appears from the application that on 28th January 1999, the counsel for the applicant remained absent and in his absence the evidence of the plaintiff came to be recorded. The case was then posted for argument and the Judgment and Decree came to be passed against the defendants. It also appears, that after the receipt of summons of the Special Execution Application No. 15/99/B and on inquiry from his advocate, the applicant came to know that his counsel had remained absent and that is how the exparte decree came to be passed. It also appears that earlier the present applicant and another defendant had filed an application for setting aside the exparte decree but, the same came to be dismissed on 28th July 2000 as it was noticed that the said application was not within the prescribed period of limitation. The applicant, therefore, filed another application for setting aside the exparte decree alongwith an application for condonation of delay.

4. The learned trial Court by its Order dated 22nd March 2001 dismissed the application for condonation of delay on the following grounds:- (1) that the application was not verified nor any affidavit in support of its contentions had been filed by the applicant and, therefore, the facts in support of the application for condonation of delay had not been proved; (2) in the written arguments, the applicant had not stated the provision under which the application for condonation of delay had been filed; (3) the applicant had not stated any reason for filing the application after 31 days of the dismissal of the earlier application for setting aside the exparte decree; and (4) there is no explanation regarding this period in the application.

5. Mr. Kantak, the learned counsel appearing for the applicant, has invited my attention to the application for setting aside the exparte decree and the application for condonation of delay. In the application for condonation of delay it is stated that on the advise of his counsel, the applicant had not attended various dates when the case was posted before the learned trial Court. It is further stated that a copy of the notice of the execution application was received by the original defendant no. 2, who immediately contacted his counsel. Thereafter, the

original defendant no. 2 contacted the present applicant on 14th October 1999. It may be incidentally stated that the present applicant is a resident of Tamil Nadu. The application further states that an application for setting aside the exparte decree was made on 18th October 1999 but the same was dismissed by the trial Court on 28th July 2000 on the ground that it was beyond the period of limitation. According to the aforesaid application, a certified copy of the Order was applied for on the same day, the copy was received by the counsel on 8th August 2000 and was communicated to the present applicant on or about 24th August 2000. The application further states that the present applicant on or about 28th August 2000 came to Goa and contacted his advocate, who advised him to seek the advice of a lawyer in Panaji. The application further states that the applicant contacted a lawyer in Panaji, who advised him to file a fresh application for setting aside the exparte decree alongwith an application for condonation of delay. The application for condonation of delay, therefore, came to be filed on 29th August 2000 alongwith an application for setting aside the exparte decree. The contents of the application for condonation of delay have been affirmed on a separate affidavit, which was also filed. It may also be stated that in the application for condonation of delay an explanation was given by the applicant/defendant no. 1

explaining the delay in filing the earlier application, which came to be rejected, as well as for the interregnum period between the dismissal of the earlier application and filing of the present application. Mr. Kantak, the learned counsel appearing for the applicant, therefore, submits that the learned trial Court was not correct in dismissing the application particularly for the reasons mentioned in grounds 1, 3 and 4, as set out by me above. It is further submitted by Mr. Kantak, the learned counsel appearing for the applicant, that mere non-mentioning of the provision under which condonation of delay is sought, can hardly be a reason for rejecting the application.

6. The respondent no. 1/original plaintiff appeared, in response to the notice of this Court, on 14th March 2002 and requested for time to enable him to engage an advocate. Advocate Mr. Vijaychandran today appeared for the respondent no. 1 and has urged before me that the conduct of the applicant/original defendant no. 1 disentitles him to seek the setting aside of the ex parte decree. According to him, though the applicant/defendant no. 1 had filed his written statement, thereafter, he had not contested the suit. The learned counsel for the respondent no. 1 did not dispute that the application for condonation of delay was accompanied by an affidavit and that reason had

been given as to why the application could not be filed within time. The learned counsel for the respondent no. 1 also did not dispute that the applicant in his application for condonation of delay had also given an explanation for the delay in filing of the present application during the interregnum period from the dismissal of the earlier application to the filing of the present application.

7. I have given my anxious considerations to the submissions advanced by the learned counsel for the parties. The learned trial Court has rejected the application for condonation of delay on 4 grounds, which are factually incorrect. The application is supported by an affidavit and there is an explanation as to why the application could not be filed earlier. The learned trial Court has completely lost sight of the recitals in the application and on the erroneous assumption that the recitals in the application for condonation of delay had not been proved, proceeded to dismiss the application for condonation of delay. The Order, according to me, is unsustainable and, therefore, deserves to be quashed and set aside. The applicant has given satisfactory explanation and the application for condonation of delay, therefore, deserves to be allowed.

8. In the result Civil Revision Application is allowed. The impugned Order of the Additional Civil Judge, Senior Division, Vasco da Gama, dated 22nd March 2001, in Civil Miscellaneous Application No. 167/2000/B is, hereby, quashed and set aside. The aforesaid Civil Miscellaneous Application for condonation of delay is allowed, subject to payment of costs of Rs. 500/- by the applicant to the respondent no. 1.

(P.V. HARDAS)
JUDGE.

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