

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.2344 of 2004

and

CMP No.17685 of 2004

S.Elangovan

.. Petitioner/Appellant

vs

1.The Deputy Registrar  
Cooperative Societies  
Namakkal Town & Taluk  
Namakkal District

2.The Secretary  
Namakkal Cooperative Urban Ltd.,  
No.19, Ranger Sannathi Street  
Namakkal Town & Taluk  
Namakkal District

3.Sakunthala

4.Srinivasan

5.Sankar

.. Respondents/Respondents

Civil revision petition preferred under Article 227 of the Constitution of India against the fair and decreetal order of the Principal District Judge, Namakkal, dated 12.8.2004 made in I.A.No.30 of 2003 in CMA (CS) (Unnumbered) of 2003.

For Petitioner : Mr.G.Jermiah

For Respondents : Mr.Palanisamy for R2  
RR3 to 5 - given up

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ORDER

Challenging an order of dismissal of I.A.No.30 of 2003 seeking condonation of delay of 300 days in preferring an unnumbered CMA, passed by the Principal District Judge, Namakkal, the petitioner/appellant has brought forth this revision before this Court.

2.The Court heard the learned Counsel on either side.

3.The case of the petitioner was that an ex-parte award came to be passed by the first respondent on 28.3.2002; that the petitioner was never served with the summons in the said proceedings initiated by the second respondent before the first respondent; that during the relevant period, the petitioner was at Delhi in connection with his profession, and thus, he was totally unaware of the proceedings; that when the second respondent

attempted to enforce the award by way of Revenue Recovery Act proceedings, he came to know about that; that even the award that was sent by certificate of posting, was traced and found out; that the same was also filed along with the appeal, and thus, there was a delay of 300 days in preferring the appeal, since he had no knowledge about the proceedings at all, and under the circumstances, the delay has got to be condoned. The application was seriously objected to by the respondents 1 and 2. On enquiry, the said application was dismissed. Hence, this revision before this Court.

4. When the matter was taken up for enquiry, the learned Counsel for the petitioner would submit that so far as the ex-parte award was concerned, there is no provision under the Act to set aside the ex-parte award; that an appeal has got to be filed in the regular course; that accordingly, the appeal was filed; that in doing so, there was a delay of 300 days; that in the instant case, there was no personal service of summons; that the petitioner had no knowledge about the proceedings, and thus, the delay had occasioned, and under the circumstances, the delay has got to be condoned.

5. The Court heard the learned Counsel for the second respondent on the above contentions.

6. After careful consideration of the submissions made, without going to the merits or otherwise of the rival contentions put forth, this Court is of the considered opinion that the delay has got to be condoned in view of the circumstances, and the interest of justice would also require so. Accordingly, the order of the lower Court is set aside, and the delay is condoned but subject to payment of cost. The petitioner is directed to pay a cost of Rs.5,000/- (Rupees five thousand only) to the second respondent herein within a period of six weeks herefrom, failing which the revision shall stand automatically dismissed. Accordingly, this civil revision petition is allowed. No costs. Consequently, connected CMP is closed.

nsv/

सत्यमेव जयते

Sd/-  
Asst.Registrar

/true copy/

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Sub Asst.Registrar

To:

The Principal District Judge  
Namakkal

+1 cc to Mr.M.S.Palaniswamy, Advocate Sr.No.38846.

+1 cc to Mr.G.Jermiah, Advocate Sr.No.39006.