

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2013

CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

CRP.(NPD)No.2573 of 2010
and
M.P.No.1 of 2010

V.Palaniandi	.. Petitioner
	Vs.
State Bank Manager, Perambalur.	.. Respondent

Prayer : Civil Revision Petition is filed under Section 115 of CPC against the fair and Decreetal order dated 05.02.2010 in I.A.No.93 of 2009 in O.S.No.8 of 2005 on the file of the District Judge, Perambalur.

For the petitioner : Mr.R.Selvakumar

For the Respondent : Mr.K.S.Sundar

ORDER

This Civil Revision Petition is directed against the order dated 05.02.2010 passed by the District Judge, Perambalur in I.A.No.93 of 2009 in O.S.No.8 of 2005.

2. The petitioner is the defendant in O.S.No.8 of 2005 on the file of the District Judge, Perambalur. The respondent / Bank filed the suit for recovery of a sum of Rs.7,77,650/- on the basis of the mortgage executed by the petitioner. The petitioner mortgaged his property, with the respondent, by depositing the title deeds, on

10.05.1997. The petitioner engaged an Advocate, but subsequently he did not choose to file his written statement in the suit. So, the petitioner was set ex-parte and an ex-parte decree was passed, on 28.08.2006. Thereafter, the respondent filed an application, in I.A.No.70 of 2008, for passing final decree. The petitioner received notice in the final decree application. He entered appearance in the final decree proceedings and filed vakalat, through his advocate, on 21.04.2009. Thereafter on 08.07.2009 the petitioner filed an application in I.A.No.93 of 2009 to condone the delay of 1105 days in filing the application to set aside the ex-parte decree.

3. The petitioner averred in the affidavit that after receiving summons in the suit, he engaged an Advocate and his counsel has informed that he will communicate the suit proceedings in due course and that the counsel also sent a letter, but he did not receive the same. He came to know about the ex-parte decree only after receiving notice in the final decree proceedings and even then, since he was suffering from Jaundice, he could not file the application immediately. Due to the reasons, the delay occurred. The respondent resisted the petition. The learned District Judge, Perambalur, dismissed the application holding that in spite of sufficient

opportunity given to the petitioner, he did not avail the remedy and the conduct of the petitioner shows that he remained ex-parte only with a view to drag on the proceedings. Aggrieved by the said order, the present revision is filed.

4. The learned counsel for the petitioner would submit that the suit was filed for recovery of money on the basis of the mortgage and the property of the petitioner is very well with the respondent/Bank. The petitioner could not file his written statement only due to the reason that he did not receive any letter of his counsel. He further submitted that the delay is not deliberate or malafide and so, the petitioner may be given an opportunity to defend the case.

5. It is seen from the records that the mortgage was created in the year 1997 and the Bank laid the suit to recover the amount of Rs.7,77,650/-, in the year 2005. Admittedly, the petitioner received notice, in the final decree proceedings and entered appearance, on 21.04.2009. However he chose to file the condone delay petition only on 08.07.2009. The reason given by the petitioner for condonation of delay is that he was informed by his counsel that he will communicate the progress of the proceedings, but he did not receive any

communication from his counsel and thereafter, since he was suffering from jaundice, he could not file the application in time. It is settled position that it is the duty of the petitioner to meet his counsel to ascertain the stage of the case. The conduct of the petitioner shows that he was adopting dilatory tactics to drag on the suit. The petitioner has not explained the inordinate delay and the reasons given by the petitioner is not convincing and acceptable. The petitioner has not shown 'sufficient cause' for condoning the enormous delay of 1105 days. Hence, I do not find any infirmity or irregularity in the order passed by the Court below.

6. In the result, the Civil Revision Petition is dismissed. Consequently connected M.P.No.1 of 2010 is closed. No costs.

20.12.2013

Index : Yes / No
Internet: Yes/ No
adl

1. The District Judge, Perambalur.
2. The State Bank Manager,
Perambalur.

K.KALYANASUNDARAM, J.

adl

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