

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

C O R A M

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

CRP.NPD.No.941 Of 2015
and M.P.No.1 of 2015

Ganesan ... Petitioner / Defendant

Vs.

Pushpavathy ... Respondent / Plaintiff

PRAYER : Revision Petition is filed under Section 115 of Civil Procedure Code against the order dated 08.11.2013 made in I.A.No.100 of 2013 in O.S.No.18 of 2010 on the file of Sub Court, Gobichettipalayam.

For Petitioner : Mr.M.Guruprasad
For Respondent : Mr.V.S.Kesavan

ORDER

This revision arises out of the order passed by the Sub Court, Gobichettipalayam in I.A.No.100 of 2013 in O.S.No.18 of 2010.

2. The petitioner is the defendant in O.S.No.18 of 2010 filed by the respondent for specific performance of the agreement dated 02.03.2005. The petitioner filed his written statement on 05.08.2010 disputing the genuineness of the agreement of sale. The specific case of the defendant is that at the time of borrowing Rs.50,000/- from the husband of the plaintiff, he was forced to execute the sale agreement. However, when the suit was taken up for trial, the defendant did not took part in the suit proceedings, hence the suit was decreed exparte on 04.04.2012. The petitioner filed I.A.No.100 of 2013 to condone the delay of 251 days in filing the application to set aside the exparte decree. In the affidavit, the petitioner had contended that he was affected by jaundice and was taking native treatment and after recovery, he came to know about the exparte decree and hence the delay occurred.

3. Mr.Guru Prasad, learned counsel for the petitioner submitted that the petitioner was suffering from Jaundice and the application was filed only to condone the delay of 251 days but the trial court, adopting hypertechnical view, had dismissed the application. The learned counsel further submitted that the petitioner is having case on merits and therefore he should be given opportunity to defend the case.

4. On the other hand, Mr.V.S.Kesavan, learned counsel for the respondent submitted that the petitioner has entered his appearance in the execution petition on 20.09.2012, but chose to file this application only during the month of January 2013. Even in the execution petition, the petitioner did not contest the case and the trial court, after setting the petitioner exparte, executed the sale deed in favour of the respondent on 16.10.2014. The learned counsel further contended that the respondent has spent more than Rs.62,000/- for execution of the sale deed and also spent other incidental expenses.

5. It is seen that the suit was filed for specific performance and the petitioner has filed his written statement disputing the genuineness of the sale agreement. The petitioner has filed application to condone the delay of 251 days stating that he was suffering from jaundice and was taking native treatment and hence the delay occurred. It is true that the petitioner has entered his appearance in the execution petition during the month of September 2012 but filed this application only on 11.01.2013 and the respondent / plaintiff has incurred expenses in execution of the sale deed.

6. However, considering the nature of prayer sought for in the suit and the length of delay, I am of the opinion that the petitioner should be

given opportunity to contest the suit and his defence cannot be nipped in the bud. Considering the inconvenience caused to the respondent/plaintiff, the delay is condoned on payment of cost of Rs.70,000/- to be paid by the petitioner to the respondent/plaintiff, within a period of three weeks from the date of receipt of a copy of this order, failing which this Civil Revision Petition shall stand dismissed automatically, without further reference to this court.

This Civil Revision Petition is allowed with the above terms.
Consequently, connected Miscellaneous Petition is closed.

17.03.2015

Index : Yes/No
rgr

To

The Subordinate Judge,
Gobichettipalayam.

K.KALYANASUNDARAM, J.

rgr

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