zwIN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.09.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD).No.2150 of 2011
and
M.P.No.1 of 2011

Unnamalai .. Petitioner

vs.

Muniyammal .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 31.03.2011 made in I.A.No.173 of 2010 in O.S.No.57 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram.

For Petitioner ... M/s.M.Selvam

For Respondent ... M/s.C.Prabakaran for R1

O R D E R

This petition is filed by the petitioner praying to set aside the fair and decretal order dated 31.03.2011 made in I.A.No.173 of 2010 in O.S.No.57 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Pennagaram.

2. The respondent herein filed a suit in O.S.No.57 of 2009 on

the file of District Munsif cum Judicial Magistrate Court, Pennagaram, seeking the relief of specific performance. The petitioner had a knowledge, only after service of notice in the execution petition. The petitioner came to know that the suit has been decreed *exparte* on 21.11.2009 on the basis of substituted service. But, the same was filed only on 28.04.2010. Though the petitioner had knowledge only after service of notice in execution petition, the petitioner has filed this petition in time. This petition is filed within a period of 30 days and with abundant caution, the condonation delay petition is also filed. Therefore, the learned counsel for the petitioner would submit that the petitioner has no willful intention to delay or drag on proceedings. The petitioner is an aged person and not able to move anywhere, so that, she could not read any news papers. If really summons are served, the petitioner would have attended the Court and filed the petition. Because of the exparte decree, the petitioner is put to great hardship.

3. The learned counsel for the respondent submitted that it is true that a delay of 120 days has been occurred in filing the petition to set aside exparte decree. The contention of the petitioner that the petition to condone delay was filed on 28.04.2010, he came to know of the exparte decree only after service of notice in execution petition,

is false. The petitioner is attempting to alienate the suit properties and the petition is devoid of merits. Accordingly, he would submit that this petition is liable to be dismissed.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5. Considering the facts and circumstances of the case, this Court is inclined to allow the petition, subject to the condition that the petitioner shall pay a sum of Rs.2,000/-(Rupees two thousand only) to the learned counsel appearing for the respondent, within a period of two weeks, from today. Further, the trial Court is directed to consider the application filed by the petitioner seeking to set aside the exparte order dated 31.03.2011 and dispose of the same, within a period of one month, from the date of receipt of a copy of this order, by giving notice to both parties. The trial Court is also directed to dispose of the suit in O.S.No.57 of 2009, within a period of three months, from the date of receipt of a copy of this order. In this regard, both parties are directed to co-operate for earlier disposal of the suit.

M.V.MURALIDARAN,J.
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6. With the above observation, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2016

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Index:Yes/No
Internet:Yes/No

To
The District Munsif cum Judicial Magistrate Court,
Pennagaram.

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