

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP.NPD.No.3247 of 2010

and

MP.No.1 of 2010

and

CMP.Nos.6001 & 6002/2016

M.Duraisamy .. Petitioner/defendant

Vs.

Selvaraj .. Respondent/plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.12.2009 passed in I.A.No.654 of 2008 in O.S.No.1599 of 2002 by the learned Subordinate Judge, Namakkal.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.T.Dhanyakumar

ORDER

This Civil Revision Petition arises against the fair and decreetal order dated 14.12.2009 passed by the learned Subordinate Judge, Namakkal, in I.A.No.654 of 2008 in O.S.No.1599 of 2002.

2. The respondent/plaintiff herein filed a suit in O.S.No.1599/2002 on the file of the learned Subordinate Judge, Namakkal, praying for recovery of money based on the registered

mortgage deed dated 03.03.1999. In the written statement, the revision petitioner/defendant himself has admitted that he borrowed a sum of Rs.40,000/- from the respondent herein/plaintiff.

3. On the other hand, the defendant / petitioner resisted the suit and filed a written statement denying the averments made in the plaint.

4. When the suit was taken up for enquiry, the defendant/ petitioner herein did not appear before the trial Court, even after receiving notice in the suit. The trial Court passed an ex-parte preliminary and final decree in the suit as against the defendant/petitioner. On the basis of the final decree, the respondent/plaintiff filed an Execution Petition in REP.No.22/2007 and served notice on the petitioner/defendant.

5. Before receipt of such notice, the petitioner/defendant came to know about the passing of the final decree and on 05.01.2016, he filed an Interlocutory application in I.A.No.654 of 2008 praying to set aside the decretal order dated 14.12.2009 before the trial Court. But, the same was returned for certain compliance. Thereafter, it was not represented. Further, the defendant/revision petitioner filed a petition along with an

Interlocutory application in I.A.No.654 of 2008 to condone the delay of 2030 days in filing the said application.

6. Upon hearing the learned counsel appearing for the parties and considering the evidence adduced in this case, the Subordinate Judge, Namakkal, while observing that after filing execution petition and after the property coming to the auction, the petitioner/defendant filed a petition to set aside the final decree along with an interlocutory application in I.A.No.654 of 2008 to condone the delay of 2030 days in filing the application. Since the defendant/petitioner failed to adduce sufficient reasons for condoning the delay, the said application was dismissed. Aggrieved by this order, the present Civil Revision Petition has been filed.

7. Mr.R.Subramanian, learned counsel appearing for the revision petitioner would submit that the trial Court passed preliminary and final decree as against the revision petitioner/defendant as he did not appear before the trial court. Therefore, an opportunity of hearing should be given to the revision petitioner in the case, otherwise, irreparable prejudice will be caused to him.

8. On the contrary, Mr.T.Dhanyakumar, learned counsel appearing for the respondent would submit that inspite of the fact that the revision petitioner/defendant was aware of the preliminary and final decree, he did not take any steps to set aside the said orders. After filing the execution petition on the basis of the final decree, he filed a petition to set aside the final decree along with the condone delay petition. But, in that petition, he did not explain sufficient reasons for condoning the delay. Therefore, the learned trial Judge has rightly dismissed the interlocutory application and no interference is warranted by this Court at this stage and therefore, the Civil Revision Petition may be dismissed. He further submitted that the matter cannot be reconsidered in view of the decisions of this Court reported in **Kaliammal and others vs.Sundharammal and another** in **2007 (1) MLJ 577** which reads as follows:

"...It would unsettle the various proceedings of the Court. Interest of justice and enquiry requires that there must be an end to the litigation or otherwise, the right accrued to the opposite party would be unsettled by the uncertainties of the litigation."

9. Heard Mr.R.Subramanian, learned counsel appearing for the petitioner and Mr.T.Dhanyakumar, learned counsel appearing for the respondent and perused the available material on hands.

10. Having admitted receipt of a sum of Rs.40,000/- from the respondent herein/the plaintiff, there is no justification on the part of the defendant/revision petitioner in not settling the amount borrowed. It is settled law that in a petition filed under Section 5 of the Limitation Act, each day's delay has to be properly and sufficiently explained. In the present case, the inordinate delay of 2030 days in filing the aforesaid application has not been explained properly and sufficiently. This Court is unable to see any sufficient reason to condone such an inordinate delay of 2030 days. Therefore, this Court is not inclined to interfere with the impugned order passed by the trial court.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

21.04.2016

gv

To

The learned Subordinate Judge,
Namakkal.

D.KRISHNAKUMAR,J.

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